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JOINT APPENDIX

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,302

HARRY SACHER, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

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261 Filed in Open Court Dec. 21, 1955

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Criminal No. 1261-'55

Grand Jury Original
(2 U.S.C. 192)

(Grand Jury Impanelled on December 1, 1955,
and Sworn in on December 6, 1955)

UNITED STATES OF AMERICA

v.

HARRY SACHER

The Grand Jury charges:

Introduction

On April 19, 1955, in the District of Columbia, a subcommittee of the Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws, of the Committee on the Judiciary of the United States Senate, was conducting hearings, pursuant to the Legislative Reorganization Act of 1946, Section 102(1) (k), (60 Stat. 818); and to Senate Resolutions 366 of the 81st Congress and 58 of the 84th Congress, and to the Standing Rules of the Senate.

Defendant, Harry Sacher, appeared as a witness before that subcommittee, at the place and on the date above stated, and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant unlawfully refused to answer those pertinent questions.

The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition merely describe

the question which was asked of the defendant and which he refused to answer.

COUNT ONE

Are you, Mr. Sacher, a member of the Communist Party, U.S.A.?

COUNT TWO

Have you ever been a member of the Communist Party of the United States?

COUNT THREE

Are you now or have you ever been a member of the lawyers' Section of the Communist Party, U.S.A.?

LEO A. ROVER
United States Attorney in and for the District of Columbia

A TRUE BILL
Foreman

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263 Filed Feb. 9, 1956

Motion to Dismiss Indictment

The defendant moves that the indictment be dismissed for the reason that it does not state facts sufficient to constitute an offense against the United States.

DAVID REIN
David Rein
Attorney for Defendant

264. Filed Feb. 9, 1956

Motion for Bill of Particulars

The defendant moves that the Court order the United States to file a bill of particulars setting forth the following:

1. State the matter under inquiry as to which each of the questions set forth in Counts 1, 2 and 3 are alleged to be pertinent.

2. State the manner in which each of the questions set forth in Counts 1, 2 and 3 are alleged to be pertinent to the matter under inquiry referred to in Item 1 above.

3. State the legislative purpose of the matter under inquiry before the Committee.

DAVID REIN
David Rein
Attorney for Defendant.

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265 Filed Feb. 9, 1956

Motion for a Hearing on the Qualifications of the Grand Jurors

The defendant moves the Court for an order setting a hearing for the purpose of inquiring into the qualifications of the grand jurors in this proceeding.

In support of this action, the defendant states that the list of the grand jurors shows that eleven members of the grand jury which indicted the defendant were employees of the United States Government. Two others are housewives and may be wives of government employees. A hearing would be necessary to determine whether the votes of some of these government employees or wives of government employees were necessary for a return of the indictment.

The hearing on the qualifications of the grand jurors is requested so that the defendant may produce evidence in such hearing that government employees as a class may not properly sit as grand jurors to return the indictment herein because governmental pressures relating to the loyalty and security of government employees prevents such employees from being or appearing to be unbiased in this case.

In addition, the defendant wishes to have an opportunity to examine each of the government employees who sat on the grand jury with respect to the influence upon such juror of the loyalty and security programs of the government in the light of the nature of this case, and to prove, as a result of such questioning, the existence of actual bias on the part of said grand juror against the defendant.

DAVID REIN
David Rein
Attorney for Defendant.

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267 Filed Feb. 9, 1956

Offer of Proof in Connection With Motion for Hearing on Qualifications of Jurors

The defendant, in support of his motion for a hearing on the qualifications of the grand jurors who indicted him, offers to prove at such a hearing that governmental pressures and the climate of opinion among government employees prevented them as a class from being or appearing to be impartial and unbiased grand jurors in the defendant's case. Among the evidence which the defendant will adduce for this purpose are the following:

1. Government employees who have been attacked and accused of alleged disloyalty by congressional figures including Senators McCarthy, Jenner and McCarran and Congressman Velde have been constantly harassed and

subjected to abuse and threats and their positions have been jeopardized. Government employees have been forced to resign because of these charges and one, who had been frequently attacked by both Senator McCarthy and Senator McCarran, was discharged after having twice been cleared by loyalty boards of his agency.

2. In a number of previous cases allegedly involving "security", judges and jurors have been attacked by members of Congress and other government officials whenever such judge or jurors took any action that displeased these congressman. Most notable was the criticism visited upon the judge who presided and the jurors who voted to acquit in the first Hiss trial. Supreme Court Justice William Douglas was threatened with impeachment because of his issuance of a stay in the celebrated Rosenberg case. Appellate judges were criticized on the floor of the Senate and threatened with investigation because of their granting of bail to Harry Bridges. Judge Metzger of Hawaii was denied reappointment as a judge because he fixed bail for a group of defendants at a sum far lower than that recommended by the Department of Justice.

268 3. The situation which was already acute was greatly intensified as a result of the change in administration. President Eisenhower issued a new executive order, 10450, superseding the previous executive order on the loyalty of government employees, Executive Order 9835. The test under this new executive order was stated to be whether any employee of the government was a "security risk". The issuance of the new executive order was accompanied with statements by the Attorney General and other leading officials of the administration that the previous loyalty order had been too lenient and that under the new executive order alleged security risks who had survived the previous loyalty order would be cleared out of the government and that all "doubts" would be resolved in favor of the government. Under the new

executive order, persons were to be retained in the federal service only if their retention "is clearly consistent with the interests of the national security". One of the standards to be considered in making this determination is any "behavior, activities or associations which tend to show that the individual is not reliable or trustworthy."

4. The new executive order was issued with a great deal of attendant publicity. Simultaneously, the administration announced that it was going to cut the federal pay rolls. The simultaneous announcement of a cut in the federal payroll together with the wide-spread criticism of the manner in which the loyalty program had operated under the Democratic administration created a wide-spread and general fear among government employees that their jobs were in jeopardy and that they could be discharged either under the security program or the economy program for the slightest departure from official administration policy.

5. This situation was even further intensified by the public investigation and charges carried on by Senator McCarthy. He criticized not only the general loyalty program under the Democratic administration, but also specific individuals who sat on loyalty boards which
369 had given clearance to government employees. Thus, in McCarthy's eyes the mere fact of having cleared an employee in a loyalty program made the government employees on the loyalty board themselves subject to suspicion of disloyalty. The wide-spread publicity given to these charges of Senator McCarthy made it clear to government employees that supporting, defending or voting in favor of any individual accused of Communism or disloyalty would in itself subject one to charges and suspicions of disloyalty. Government officials attacked by Senator McCarthy on these grounds have been disciplined. Others, although not formally disciplined, have been made subject to investigations, unfavorable publicity, and have had their government careers seriously jeopardized.

6. Not satisfied with the new security program which had already announced that all "doubts" must be resolved in favor of the government, a leading Republican senator called for an expansion of this program to include "crypto-socialists." "Crypto-socialists" were defined as those government employees who believed "government is good and to be expanded", "labor unions are good", and "the federal government, at least since 1932 is progressive", or that "public ownership is better than private enterprise".

7. As a result of such incidents and many others involving the operation of the loyalty and security programs of the government, there exists among government employees and their families, as numerous and competent qualified observers can testify, a climate of fear of being charged with disloyalty or of being a "security risk" on account of opinions, beliefs, associations and actions, which inevitably influences the vote of a government employee serving as a juror in a case such as the defendant's. See, e.g., Barth, The Loyalty of Free Men; Jahoda & Cook, Security Measures and Freedom of Thought, an Exploratory Study of the Impact of Loyalty and Security Programs (1952) 61 Yale Law Journal, 295; Brown, 6,000,000 Second Class Citizens, The Nation, June 28, 1952, Volume 175, p. 644.

270 8. Under the standards and practice of the loyalty and security programs of the government, it would be almost inevitable that loyalty and security boards would take into account how government employees and members of their families sitting as grand jurors in the defendant's case voted.

9. Even if loyalty and security boards did not take such matters into account, government employees and their families believe, and have reason to believe, that loyalty and security boards and loyalty and security investigations

would take into consideration how they voted as grand jurors in the defendant's case.

10. The discipline and environment which condition and surround government employees, the expressed opinions of high government officials, and the policies government employees carry out create in such employees as a class a predisposition which prevents them as a class from being, or appearing to be, impartial grand jurors in a case such as defendant's.

11. The government employees who voted to indict the defendant were because of the pressures and climate and the other factors described, unfair and biased grand jurors in the defendant's case.

DAVID REIN
David Rein
Attorney for Defendant.

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271 Filed Feb. 24, 1956

Order

On this 24th day of Fe ruary, 1956, came the attorney of the United States; the defendant in proper person and by his attorney, David Rein, Esquire; whereupon the motion of the defendant for a hearing on qualification of Grand Jurors, coming on to be heard, after argument by counsel, is by the Court denied without argument; and thereupon the motion of the defendant for a bill of particulars, coming on to be heard, after argument by counsel, is by the Court denied; whereupon the motion of the defendant to dismiss the indictment, coming on to be heard, after argument by counsel, is by the Court denied.

By Direction of
ALEXANDER HOLTZOFF

274 Filed Mar. 15, 1956

Judgment and Commitment

On this 13th day of March, 1956 came the attorney for the government and the defendant appeared in person and by counsel, Hubert Delany and David Rein, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of Violation of Section 192, Title, 2, U. S. Code. as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) months and to pay a fine of One Thousand ($1,000.00) Dollars.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Alexander Holtzoff,
United States District Judge.

Excerpts from Transcript of Proceedings

26 **Julian G. Sourwine**

was called as a witness by the United States, and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hitz:

Q. Mr. Sourwine, will you give your full name, please, sir? A. Julian G. Sourwine.

Q. You are an attorney, are you, sir? A. I am.

* * * * * * * * * *

Q. In April, 1955, sir, were you employed by the Judiciary Committee of the Senate? A. I was employed by the Internal Security Subcommittee of the Senate, a subcommittee of the Committee on the Judiciary.

27 Q. How long had you been employed by them, sir? A. I had been employed by the Internal Security Subcommittee since the beginning of 1955 as its chief counsel. I had been employed by the Judiciary Committee in varying capacities for a period of more than ten years.

Q. In April, and particularly on April 19, 1955, did the subcommittee of the Judiciary Committee that you have referred to have before it Harry Sacher as a witness? A. Yes.

* * * * * * * * * *

Q. Would you be good enough to tell us, Mr. Sourwine, the subject that was under inquiry by the Internal Security Subcommittee at the time that Mr. Sacher was called before it as a witness?

* * * * * * * * * *

28 A. The committee was engaged in its continuing investigation into the scope, the extent, and the effect of subversive activity in the United States.

By Mr. Hitz:

Q. And particularly what was the pertinency of the testimony expected to be elicited from Mr. Sacher with respect to that purpose?

. . . . . .

A. The committee hoped to secure testimony from Mr. Sacher with respect to a number of matters

The Court: In respect to what?

The Witness: A number of matters

The committee had testimony in its record dating back from 1952 with respect to activity of Mr. Sacher bearing on the subject of the committee's inquiry, that is, subversive activity.

The committee had information which was not a part of its record concerning other reported activity of Mr. Sacher

The Court: Just a minute.

Do you wish to address the Court?

Mr. Delany: May it please the Court, I would like to move that this answer of the witness be stricken from the record on the ground his testimony is incompetent.

The Court: I am inclined to grant the motion, but I will hear you, Mr. Hitz.

. . . . . .

The Court: Of course, in the Morford case the evidence that was offered was evidence as to just what information was in the files of the committee. It happened to be a speech. But here the witness is testifying to the general conclusion that there was information of a certain kind.

Perhaps my statement that this is hearsay is not quite accurate. It is really a conclusion, for example, if I may take an analogy from another field. In order to establish reasonable ground for making an arrest you can put in hearsay information, but you have to point expressly what

that hearsay was, and not only a statement that information existed.

Mr. Hitz: I quite agree with the Court.

The Court: So I will sustain the objection.

. . . . . .

33 The Court: The Court's ruling applies only to the general statement. I will allow the witness, however, to summarize specifically the information that the committee had on this subject.

Mr. Hitz: Yes, Your Honor.

The Witness: I am not sure that I can state it all.

The committee had received testimony in connection with its investigation of the Institute of Pacific Relations that a certain transcript in a case before the Immigration and Naturalization Service of which the Immigration and Naturalization Service said there was only one copy allowed out; and which copy Immigration and Naturalization Service told the committee had been given to Mr. Sacher.

. . . . . .

34 Q. Will you tell us in what capacity Mr. Sacher was allegedly acting when he received the supposedly sole copy of the report? A. As counsel for Mr.
35 Santos whose immigration case was then before the Immigration and Naturalization Service.

. . . . . .

Q. Will you state only so much of the information
36 Mr. Sourwine with respect to Mr. Sacher's activities in 1952 that your committee knew about as would relate to the purposes of your resolution, and tell us how it does relate to that was now to relate with respect to his obtaining the allegedly single copy of the Government document.

Mr. Delany: May it please the Court, I respectfully object to this question as irrelevant and incompetent.

The Court: Objection overruled.

The Witness: The committee's investigation, sir, had to do with subversive activities, their existence, their scope, and their effect. I do not want to go beyond what the Court has instructed should be the proper limits.

To summarize, Your Honor, the committee had a great deal of information on the general subject of the activities of Communist lawyers in connection with the Communist conspiracy.

The committee had on previous occasions sought to particularize that general information.

I wonder if it would simplify this matter if I said that a summary of all of the non-sworn information which was before the committee had been printed in the committee's report as an appendix and is available, that is, relating particularly to Mr. Sacher.

Mr. Delany: May it please the Court, I want to move to strike out his answer because it is irrelevant, incompetent, and it is not responsive to the question.

37

The Court: I am going to deny the motion, but of course the witness' answer doesn't incorporate by reference that particular record into the record of this trial.

By Mr. Hitz:

Q. Are you able to summarize the information that the committee had at that time? I don't think that will overstep the limitations the Court has put on your testimony, sir. A. The committee had information respecting Mr. Sacher's connections with Communist and Communist front organizations going back over a period of a number of years, going back to at least as early as 1937.

The Court: What was the information? You said you had information with respect to certain matters. What was that information?

The Witness: Well, the committee had information that Mr. Sacher had been connected in one capacity or another with various Communist front organizations over a period of many years.

Mr. Delany: I respectfully ask that Your Honor strike that statement from the record because it is irrelevant and incompetent also.

The Court: Objection overruled.

This testimony is not being accepted and admitted by the Court as proof of any fact except as proving
38 relevancy of the inquiry and not of any activity of this defendant.

Mr. Hitz: Precisely, Your Honor.

The Court: The Court understands that that is the purpose of this testimony.

Mr. Hitz: That is to prove pertinency under the indictment.

Mr. Delany: But even as to that, may it please the Court—

The Court: I am going to proceed. I have over-ruled the objection.

Mr. Delany: Would Your Honor hear me on that? I respectfully request that you hear me.

The Court: Very well.

Mr. Delany: Even as to that it is so general and so vague and it doesn't say anything specifically—

The Court: That might go to the probative value of the testimony, not to its admissibility.

By Mr. Hitz:

Q. Mr. Sourwine, counsel says you are too vague. Will you be specific with respect to Mr. Sacher? Will you tell everything that the committee knew at that time concerning his Communist activities? A. Yes, sir.

Q. Let us go back to the Santos papers. Start right from the beginning.

39 Mr. Delany: For the record, I am going to object to that question.

The Court: Objection overruled.

The Witness: The committee knew with respect to the Santos papers that they were papers which were supposedly

not public; that the Immigration and Naturalization Service said they had been given only one copy outside of its possession; that that copy had been given to Mr. Sacher as counsel for Mr. Santos.

The committee knew that a copy of those proceedings turned up in the possession of Mr. Lattimore who handed it into the record of the Tydings Committee proceedings.

By Mr. Hitz:

Q. In what year, sir? A. It was in '38, I believe. This committee learned of that in 1952.

The Court: This is very cryptic to the Court. What is the name of the proceeding to which the witness referred?

By Mr. Hitz:

Q. Mr. Sourwine, will you tell the Court the name of the proceeding in which Mr. Sacher obtained this sole copy of the Immigration report? A. It was a proceeding relating to the immigration status of one Santos. It was an Immigration Appeals case.

The Court: But that doesn't signify anything to me. The Court: What was the point of this testimony?

It would be helpful if you brought out the nature of the proceeding and what the purpose is in showing that there was information that this defendant handed a copy of the transcript to somebody else. I just don't follow that.

Mr. Hitz: Yes, Your Honor.

By Mr. Hitz:

Q. Mr. Sourwine, was that an immigration case? A. Yes, sir.

Q. Who was the person who allegedly violated the immigration laws, his last name? A. Santos.

Q. Santos? He was represented by whom? A. I understand he was represented by Mr. Sacher. I am testifying to that of my own knowledge.

Mr. Delany: Your Honor, please, I object to the question and the answer, and ask that it be stricken on the ground that it is improper for the District Attorney, the Government attorney, to ask about any case in which Mr Sacher appeared as attorney for Mr. Santos.

The Court: Objection overruled.

By Mr. Hitz:

Q. Was it information in the hands of the committee that Mr. Sacher represented Mr. Santos in that Immigration proceeding? A. Yes, sir.

Q. For what purpose did the committee, for what purpose was this particular document given to Mr. Sacher as attorney for Mr. Santos?

Mr. Delany: I object to this question, Your Honor.

The Court: Objection overruled.

I suggest you reframe it this way. What was the information the committee had with respect to was the Immigration authorities gave Mr. Sacher this particular document? A. Well, I have been the information which was put into the committee record.

Q. I realize that, Mr. Sourwine, but I am trying to get you to relate as a witness -- we don't have to read that. The Court has permitted you to do it. Will you please do it? A. Will you rephrase your question?

Q. I will have to read. A. All right.

The Reporter (Reading):

"Question: What was the information the committee had with respect to what the Immigration authorities gave Mr. Sacher this particular document?"

The Witness: The committee had no information as to what they gave, except that he had requested it.

By Mr. Hitz:

Q. Was it the action of the Immigration & Naturalization Service in the proceeding? A. To my knowledge, sir.

Q. I am sorry. In each of my questions—I will reframe them then, in the information of the committee to your knowledge did the committee have information that the Immigration authorities gave to Mr. Sacher as the attorney for Santos the document in question? A. The committee had such information.

Q. And in the information of the committee, what next happened to the document? A. That is what the committee was attempting to determine, sir.

Q. I see.

The Court. I don't see the relevancy unless you are going to develop between these three questions and a record in an Immigration proceeding—

Mr. Hitz. I am going to develop it, Your Honor.

By Mr. Hitz:

Q. You say the committee didn't know what became of it but wanted to find out? A. Yes, sir.

Q. Did they have any information with respect to what was introduced in the Lattimore Senate investigation with respect to this questioned document? A. The committee had information that there had been introduced before the Tydings Committee by Lattimore a copy of this same transcript.

Q. Yes, sir. So the committee did have that information as to what happened? A. That is true.

Q. Yes, sir.

Q. Mr. Sourwine, you have been testifying concerning the information that the Internal Security Committee had prior to Mr. Sacher being called as a witness concerning Mr. Sacher's activities in connection with subversive activities. Just now you were about to detail what information the committee had with respect to an incident concerning one Santos who Mr. Sacher had at one time represented.

I wonder if you would be good enough to tell us further concerning the information that the committee had with reference to Mr. Sacher's connection with Santos
44 and any subversive activities.

Mr. Delany: May it please the Court, I object to that question on the ground that the committee had nothing to do with any action that Mr. Sacher had while representing a client.

The Court: I am going to overrule the objection. This evidence is being admitted solely for the purpose of determining whether the questions asked by the committee which are referred to in this indictment were or were not relevant to the inquiry.

The answers are not being admitted as proof of any facts therein contained.

Mr. Delany: Except for—

The Court: I have ruled. Just a moment. It is not the practice in this court for counsel to respond to the Court's ruling. I have heard you fully and you made your objection.

The Witness: The importance of this document from the standpoint of the committee, Mr. Hitz, was not that it concerned a Mr. Santos, but it concerned a great deal of matevin derogatory to Louis Budenz and, that it was offered in another proceeding for the purpose of smearing Mr. Budenz and was offered by Mr. Lattimore.

By Mr. Hitz:

Q. For the record, who was Mr. Budenz at that
45 time? A. Mr. Louis Budenz was a former member of the Communist Party who at that time was a witness before the Tydings Committee.

Q. I see. There hearings had taken place prior to 1950, is that correct, sir? A. That is correct, yes, sir.

The Court: What was the Santos case about? Did it have anything to do with the Communist Party, or was it just an ordinary deportation proceeding?

By Mr. Hitz:

Q. Would you enlighten us, Mr. Sourwine, on that? A. It was a deportation appeal, as I understand it, sir, but I am not thoroughly familiar with the Santos proceeding.

The important thing to the Internal Security Subcommittee was that a document supposedly not public turned up in hands in which it was not supposed to be and was offered for a public record for the purpose of smearing a witness against Communism.

The Court: I don't like the use of such words as "smearing." Don't use slang in the court.

The Witness: I apologize to the Court.

The Court: You mean for the purpose of criticizing the witness?

The Witness: Impugning his reputation, sir.

46 The Court: Very well.

The Witness: Attributing to him immoral actions.

The Court: Was there anything in that testimony that imputed the character of this other witness? You see what the Court is trying to ascertain, Mr. Hitz?

Mr. Hitz: May I question him some further on this?

The Court: Yes.

By Mr. Hitz:

Q. Prior to 1952 had the Tydings Committee held hearings? A. Yes, sir.

Q. Concerning the Institute of Pacific Relations? A. No, sir. That wasn't the subject of the Tydings Committee hearings. The Tydings Committee hearings held were on Communism, sir, but other phases of it.

Q. It did not have anything to do with the Institute of Pacific relations? A. Collaterally, yes, sir.

Q. That was my question, sir. A. I am sorry.

Q. Now, Owen Lattimore was one of the subjects of the investigation of the Tydings Committee, is that not right, sir? A. That is correct, sir.

Q. Mr. Budenz was one of the witnesses in that
47 hearing, was he not, sir? A. Yes, sir.

Q. His testimony was largely against that of Mr. Lattimore; correct, sir? A. Yes, sir.

Q. And others like him; correct, sir? A. Yes; sir.

Q. And a document was issued from the Immigration Service in the matter of one Santos to his lawyer, Mr. Sacher; correct, sir? A. Yes, sir.

Q. That information, that document contained discrediting matter concerning a witness who was testifying in a Tydings Committee hearing? A. Yes, sir.

Q. And that found its way in the Tydings Committee? A. That transcript was produced by Mr. Lattimore.

Q. And it was believed by the committee, was it not, that the Immigration Service had given its only public copy of that to Mr. Sacher in the Santos case? A. The Immigration Service said so.

Mr. Delany: That is clearly a question of hearsay.

The Court: I am going to overrule the objection.

I am going to state again that the objection would be well founded and the Court would sustain it if this
48 testimony was given for the purpose of proving the facts contained in the witness' answer. We have to distinguish in our thinking between that and merely proving the relevancy of the questions addressed to the witness which are enumerated in the indictment.

The Court is admitting this testimony merely to show the relevancy of these questions. Now, that relevancy may be established by showing that the committee had certain hearsay information which it wanted to investigate. That is entirely proper, just as I have indicated a little while ago that reasonable ground for issuing a warrant may be established by hearsay information.

Mr. Hitz: Thank you, Your Honor.

By Mr. Hitz:

Q. Now, Mr. Sourwine, you say that the information in the hands of the committee with respect to the use of this

document which was given to Mr. Sacher in his capacity as lawyer for Mr. Santos was that it had been given to him for that use; that it was the only copy, extant at least, for the public; and what other information did you have in that connection, and from whom did you get it? A. The committee had information from Mr. Shaughnessy from the Immigration Service that their records disclosed that only one copy of those deportation hearings was furnished to anyone not an official to the Department of Jus-
49 tice, and that was to Harry Sacher.

Q. Can I interrupt you there? I used the words "only one copy had been issued to the public." That is not a correct statement. "One copy had been given to anyone outside of the Immigration Service," is that not a correct statement? A. That was the statement of Mr. Shaughnessy to the then chairman of the committee; yes, sir.

Q. Was there any restriction, according to the information the committee had, any restriction upon the use that could be made by Mr. Sacher of that document? A. The committee was informed that it had been furnished to Mr. Sacher only in his capacity as counsel for Mr. Santos; and that it was not to be used otherwise.

Q. And then the committee had information that it or another copy turned up in behalf of Mr. Lattimore in the Tydings Hearings? A. In Mr. Lattimore's possession. He gave it to the committee.

Q. Did the committee also have—

The Court: For the purposes of the record, what was the Lattimore investigation? The Court cannot draw upon its memory of reading newspaper accounts.

By Mr. Hitz:

Q. What was the Tydings Committee investigation? A. Well, the Tydings Committee was investigating
50 charges which had been made against Mr. Lattimore that he was the top Soviet agent in the United States.

Q. I see.

And he was then subject of the investigation, perhaps the subject? A. By the Tydings Committee, yes, sir.

Q. That is right.

Did the Internal Security Subcommittee when it called Mr. Sacher have any other information than what you have told us concerning how the Tydings Committee got a hold of a similar copy or the copy of the Santos matter that we have been referring to? A. The Internal Security Subcommittee obtained such information, sir, from a Mr. Fanelli, an attorney who stated that he had secured a copy and had furnished it to Mr. Fortas, Mr. Lattimore's lawyer.

Q. I see.

Mr. Delany: I will object to it on the same ground.

The Court: Your objections go to the entire line of testimony, so that you don't have to repeat it. I am overruling the objection and I am admitting the testimony for the limited purpose that I have already indicated.

Mr. Delany: Thank you very much.

By Mr. Hitz:

51 Q. So that, Mr. Sourwine, do we have information in the hands of your committee to the effect that the Santos document or a copy of that document had come into the hands of Mr. Lattimore in the Tydings hearings? A. Yes, sir.

Q. All right; then it might have come either from Mr. Sacher or from one other, correct, sir? A. Yes, sir.

Q. The other being Mr. Fanelli? A. There was conflicting testimony.

* * * * * * * * * *

52 Q. Mr. Sourwine, we are endeavoring to determine what pertinency the testimony of Mr. Sacher had to the purposes of the committee in April of '55, and you were on Subject 1, which is the investigation conducted by the Tydings Committee which led your com-

mittee to get certain information concerning Mr. Sacher.

Did the committee have any desire to determine whether Mr. Fanelli's version of how Mr. Lattimore got the document in the Santos case, whether that was true, or whether the belief of the committee that it had been given by Mr. Sacher was true?

53 The Witness: The Committee wanted—

The Court: Just suppose you answer yes or no. We can make progress so much faster.

The Witness: Yes, sir.

By Mr. Hitz:

Q. What is the answer? A. Yes, sir.

Q. Yes.

And what did it do then? What did the committee do or desire to do? A. The committee desired to ask Mr. Sacher about that incident.

. . . . . .

54 Q. Before we leave that subject concerning the Tydings investigation, the Santos document, and Mr. Lattimore, did the committee have any other information on that same subject which you know of? A. Not except what I have testified to.

Q. Concerning Mr. Sacher. That's all on that subject? A. Yes, sir.

Q. Did the committee have any information concerning Mr. Sacher's own membership in the Institute of Pacific Relations or any connections other than the possible giving of the document to Lattimore with Mr. Lattimore? A. No, sir.

Q. So have we now exhausted that subject with respect to why Mr. Sacher was called? A. No, sir.

Q. No? That one subject, the Santos subject? A. Oh, yes, on that.

. . . . . .

55 Q. Let us proceed to another subject concerning which the committee had information which led the

committee to call Mr. Sacher. Is there another such subject? A. Yes, sir.

Q. What is the subject? A. There are many such subjects. One is the information which was in the possession of the committee at the time that Mr. Sacher had in 1937 been connected with the International Labor Defense which had been characterized by the then Attorney General Biddle as the legal arm of the Communist Party.

Q. Connected in what way, sir, if you know? A. Mr. Sacher had been active in the affairs of the International Labor Defense.

Q. All right, sir. Is there another subject to the information of the committee which caused it to call Mr. Sacher? A. Yes, sir.

Q. What was the next subject, sir? A. The committee had received testimony in executive session that Mr. Sacher in 1950 had been present at a meeting attended only by high functionaries of the Communist Party.

56 Q. Where? A. In New York City, at the headquarters of the Communist Party.

Q. Who else was present? A. It was a birthday party for Alexander Bittelman. Among those present were perhaps fifty high functionaries of the Communist Party, according to the information received by the committee. The committee did not have a complete list of those present, and that is one of the things we wanted to ask Mr. Sacher about.

Q. Is there another subject that caused Mr. Sacher to be brought before the committee, sir? A. Yes, sir.

Q. Will you tell us what it is? A. Mr. Sacher had been a member of the Executive Board of the New York City Division of the American League for Peace and Democracy in 1939-1940.

Q. And what of that? A. The American League for Peace and Democracy has been cited as a subversive organization by the Attorney General of the United States.

Q. Had it been cited at the time that Mr. Sacher was called as a witness? A. Yes, sir.

Q. Had it been cited at the time that the committee had information that Mr. Sacher was connected with it? A. Yes, sir.

Q. Is there another subject, sir? A. Yes, sir.

Mr. Sacher had spoken at a meeting of the Labor Advisory Committee of the Civil Rights Congress in 1952.

He had spoken at a meeting of the Bronx County Civil Rights Congress.

He had been a participant in the Sixth Anniversary Dinner held on March 26, 1952 at the Central Plaza in New York City by the Civil Rights Congress.

He had other connections with the Civil Rights Congress. That is an organization which had been cited as subversive.

Mr. Sacher had been a member of the Board of Trustees of the Jefferson School of Social Science.

Q. Would you tell us what the significance of that is? A. The Jefferson School of Social Science was a Communist-controlled and -dominated school.

Q. In what city? A. New York City.

Mr. Sacher had been a member of the Lawyers Committee on American Relations with Spain which had been cited as a subversive and Communist organization.

Mr. Sacher had been a signer of a telegram to the House Military Affairs Committee opposing conscription, the telegram being under the auspicies of the Lawyers Committee to keep the United States out of war, a subsidiary of the Emergency Peace Mobilization.

Q. In what year? A. In 1940.

Mr. Sacher had been on or had gotten a public reception of the National Council of Arts, Sciences and Professions in 1951 in New York City. That organization had been cited as subversive.

Q. Any other item of information, Mr. Sourwine? A. Mr. Sacher had been a member of and had been active in the National Lawyers Guild which had been cited as subversive.

Q. Any other subject? A. He had been a guest lecturer at the School for Democracy in 1942. That organization, that school, had been cited as subversive by the House Committee on Un-American Activities.

He had been a speaker on numerous occasions at the Workers School, 1938, February, March. That school had been cited by the House Committee on Un-American Activities as subversive.

He had been a signer of a statement in behalf of Lawyers for Communist Cases which appeared in the
59 Daily Worker, June 9, 1950.

He had defended numerous Communists, Communist leaders at various times.

He had been scheduled to speak at the meeting of the Painters Committee to defend Louis Weinstock and to repeal the Smith Act, Hotel Cornish Arms, New York City, March 1, 1952. He did speak there.

Q. Who was Louis Weinstock? A. Louis Weinstock was a Communist.

Q. In what city? A. New York City.

Q. In what year? A. 1952.

. . . . . .

60 Q. Will you tell us what connection there was between Mr. Sacher and Mr. Weinstock in so far as Mr. Weinstock's Communist activities were concerned to the information of the Committee? A. That is one
61 of the things we wanted to find out sir. We did not have that information. We wanted to ask Mr. Sacher about it.

Q. I see.

Mr. Hitz: In view of that, Your Honor, I feel that the Government should move the Court to strike that part of the recent answers of Mr. Sonywine concerning what he knew; that is, the May Day Parade was Communist dominated in New York City now and has had a counterpart in other countries in the world; that not being part of the

information of the committee, I ask the Court that it be stricken. I think it is not relevant here.

The Court: Motion granted.

By Mr. Hitz:

Q. Let us now go back so that we have only relevant material, Mr. Sourwine, with respect to what the committee's information was with respect to Mr. Weinstock's Communist activities. A. The committee's information was only that he was one of the defendants in the Smith Act trial.

Q. I see.

Q. That a committee had been formed, one of several committees, for the defense of the various defendants. This particular one was called the Painters Committee for the Defense of Louis Weinstock.

62 Q. I see. A. And that Mr. Sacher had spoken at a rally of that committee.

. . . . . .

Q. Another subject, Mr. Sourwine, that the committee had information about? A. Well, the committee had information that Mr. Sacher had spoken at other rallies in connection with the defense of Smith Act victims. For instance, at a rally of the Connecticut Committee to Aid the Victims of the Smith Act in the Siesta Room of the Hotel Guard on May 11, 1952; at a rally at St. Nicholas Arena on September 10, 1951.

The committee had information that Mr. Sacher had served as pallbearer at the funeral of Joseph R. Brodsky, a well known Communist.

I believe that summarizes the information that the committee had, sir.

Q. All right, sir.

Mr. Sourwine, had the Internal Security Subcommittee made any investigation, public or private, public or
63 executive, with respect to the testimony of one Harvey Matusow? A. Yes, sir.

Q. As a witness called by the Government in a number of cases? A. Yes, sir.

Q. Would you be good enough to tell us whether or not the committee had any information concerning Mr. Sacher's connection with Mr. Matusow?

Mr. Delany: I object to that on the ground that it is incompetent.

The Court: Objection overruled. This is being admitted for the limited purpose indicated previously.

The Witness: Yes, sir. The committee had such information. You want the gist of it?

By Mr. Hitz:

Q. I wonder if you would be good enough, having in mind the course of the questioning and the Court's ruling, if you would be good enough to tell us who Matusow was, what the subject matter was on which he testified, the connection that Mr. Sacher was alleged to have with Mr. Matusow and his activities? Can you relate to us those matters? A. Harvey Matusow was a young man who had been a member of the Communist Party, had deflected from the Party, had given testimony against various members of the Communist Party, and had subsequently
64 recanted his testimony and furnished affidavits in two cases for use in connection with requests for new trials for convicted Communists.

Q. Are you able to tell us what those two trials were? A. They were the Elizabeth Gurley Flynn case in New York.

Q. Was that a Smith Act case? A. That was a Smith Act case.

Q. Was Louis Weinstock in that case? A. I understand he was, sir.

Q. And the other case, sir? A. And the other case related to an official of the Mine, Mill and Smelter Workers Union who was tried, I believe, in Texas.

Q. A man named Jencks? A. Clinton Jencks, J-e-n-c-k-s.

Q. What was he charged with, if you remember? By

the way, when I say, "If you remember," so far on this subject have you related information then in the hands of the committee? A. Yes, sir.

Q. Will you tell us if the committee had information as to what Mr. Jencks had been charged with? A. Mr. Jencks had been charged with the improper giving of a non-Communists affidavit.

65 Q. That is lying about it? A. Yes, sir.

Q. And you say that the Committee had information that Mr. Matusow had testified for the Government in both of those cases? A. Yes, sir.

Q. And what happened subsequent to that, sir? A. Subsequent to that time Mr. Matusow had recanted his previous testimony and had given affidavits to be used in seeking new trials for those defendants.

Q. Would you be able to tell us a little bit more of the details concerning his recantation so far as the committee was aware of prior to calling Mr. Sacher? A. Yes, sir. The committee had established prior to that time that the plan for getting an affidavit from Mr. Matusow in the Jencks case had been hatched by two attorneys; that they had—

Q. Will you name them, if you know the names? A. Yes. Nathan Witt was one of them.

Q. Are you still confining yourself to information in the hands of the committee; are you? A. Yes, sir.

As a device to get Mr. Matusow to do this, it was decided to get him to write a book; the money to pay for the book had been provided through the Mine, Mill and Smelter Workers Union. Mr. Matusow had agreed to write the book. The book contained chapters on the two trials that I have mentioned.

The affidavits were prepared and Mr. Matusow was induced to sign the affidavits.

The committee had what it considered evidence indicative of the fact that this whole matter was a conspiracy having as its primary purpose the discrediting of Govern-

ment witnesses, the securing of new trials for convicted Communists, and the hampering of the Department of Justice's activity in securing information about Communism and other subversive activities.

Q. So far what you have told us was information in the possession of the committee? A. Yes, sir.

Q. Can you move on to the information the committee had with respect to Mr. Sacher's activities, if any? A. The only connection that the committee had information of in its files at that time was that Mr. Sacher had received the affidavit and certain other papers from Mr. Matusow.

Q. In which case? A. In the trial of the Elizabeth Gurley Flynn, et al., the trial of the Smith Act defendants in New York, for the purpose of using those papers and that affidavit in seeking new trials in those cases.

67 The Court: Was he counsel in the case?

The Witness: Yes, sir.

By Mr. Hitz:

Q. Any connection that he may have had with respect to the Jencks affidavit? A. The committee had no information that he was in any way connected with the Jencks affidavit.

Q. Any connection that he may have had with respect to the provision for payment of Matusow for writing the book? A. Well, one of the things we wanted to ask him about was that.

Q. That is that Mr. Matusow had been paid something to write a book? A. Yes, sir.

Q. That the committee had information, as you stated, that Mr. Matusow in connection with his repudiation of his testimony in two criminal trials was going to write a book; right, sir? A. Yes, sir.

Q. To get paid for the book? A. Yes, sir.

Q. By whom? A. Well, he was paid for the book by the firm of Cameron and Kahn. The firm was instructed to

initially from the funds of the Mine, Mill and
68 Smelter Workers Union through Nathan Witt.

Q. And Cameron and Kahn? A. Cameron and Kahn are persons who had a venture, a publishing venture. They are persons, both of whom, according to the information of the committee, were members of the Communist Party.

Q. And they were going to publish the book, is that right, sir? A. They did publish it.

Q. They did publish it? A. Yes, sir.

Q. And all this information to the committee, is that right, sir? A. Yes, sir.

* * * * * * * * * * *

69 Q. Mr. Sourwine, I think we had gotten to the point where Cameron and Kahn had a publishing venture, and that they were the ones who were going to pay Mr. Matusow for writing the book; they were going to get the money from the Mine, Mill and Smelter Union. What is that outfit? A. That is the International Union of Mine, Mill and Smelter Workers.

Q. All right, sir.

And that this was in connection with the affidavit that Mr. Matusow would file to repudiate the testimony given in the two criminal cases; and that Mr. Sacher was connected with his venture with respect to the Elizabeth Gurley Flynn case in New York? A. Yes, sir.

Q. In which Mr. Weinstock was one of the defendants; right, sir? A. Yes, sir.

70 Mr. Delany: I object to that, Your Honor.

The Court. On what ground?

Mr. Delany: I object to that. There is no testimony that shows he was so connected.

The Court: As I understand it the witness is testifying that the committee had information to that effect in its files. That is all this answer is being admitted for.

Mr. Delany: I think that Mr. Hitz will admit that so

far there has been no such testimony to show that Mr. Harry Sacher had anything to do with it.

The Court: Of course, this question of counsel is a bit leading, but I think the testimony is being elicited now. Very well.

Mr. Delany: May it please the Court, I think counsel, Mr. Hitz, will admit that there has been no testimony connecting Mr. Sacher with paying for the book or anything else.

The Court: I will overrule the objection.

Mr. Delany: I will except.

The Court: You may proceed.

By Mr. Hitz:

Q. Now, Mr. Sourwine, let us get back a little way so that I don't asume anything that is not in evidence, and I hope I don't ask any leading questions. I am sure it won't
71 be necessary to do so, and I wouldn't do it if it were.

Would you tell us what was the connection that the committee had information about between Mr. Sacher and Mr. Matusow's repudiation of his testimony, the writing of the book, the payment for the book, the publishing of the book? What was the information that you had in the committee with respect to Mr. Sacher's participation? A. The committee had information, sir, that this entire Matusow proceeding, his recantation, the writing of the book, the whole drive to discredit Government witnesses, the coining of the phrase "informer" were all the product of the planning of a group of lawyers within the Communist Party.

Q. I see. A. The committee had information that Mr. Sacher was one of those lawyers, and we wanted to ask him about it.

Mr. Delany: If Your Honor please, I object to that question and ask that it be stricken out.

The Court: Objection overruled.

Mr. Delany: Exception.

By Mr. Hitz:

Q. And that Mr. Sacher was one of those lawyers in that program? A. Yes, sir.

Q. Did your committee have information as to
72 whether or not one Donner, an attorney in New York City was associated with Mr. Sacher? A. The committee did have such information. Mr. Donner was associated with Mr. Sacher in the sense that according to the committee's information he occupied the same offices with him, law offices.

Q. Any associations with respect to this purpose that you have named already for certain lawyers? A. Well, to the extent that Mr. Donner was the author of an article which appeared in the Nation which kicked off this drive against informers.

. . . . . .

Q. You mentioned that the committee had information that money was going to pass from the Mine, Mill and Smelters Workers to the publishers; then to Matusow for the book? A. Had passed, sir.

Q. Had passed? A. Yes, sir.

73 Q. Did the committee have any information with respect to any payment to be made for any affidavits? A. The committee was attempting to determine whether the money which had been paid for the writing of the book was in fact also payment for the affidavit.

Q. Yes, sir.

Did the committee have any information with respect to any connection between Mr. Sacher and the transfer of the funds ultimately to Mr. Matusow? A. No, sir.

Q. Was the committee interested in that, sir? A. No, sir.

Q. Let me have that answer again. A. No, sir.

Q. The committee was not interested in whether or not Mr. Sacher had anything to do with the transfer of the source from Mr. Matusow? A. No. The committee had

satisfactorily traced that money out of the treasury from the Mine, Mill and Smelter Workers to Mr. Matusow's hands through Nathan Witt and Cameron and Kahn. We were interested to know whether Mr. Sacher knew about it, to what extent he participated in the planning for the strategy of it.

Q. Do you want to qualify your answer that the committee was not interested in this participation? A.
74 I said in the payment.

Mr. Delany: That is really a leading question.

The Court: No, that is not a leading question. Objection overruled.

The Witness: Perhaps I was too limited. I meant in the payments. The participation.

By Mr. Hitz.

Q. You mean in the touching of the bills? A. That is right.

Q. Mr. Sourwine, we are not talking about touching money. We are talking about participation. Do you understand my question? A. In the whole scheme?

Q. Yes, sir. A. Yes, sir. The committee was very much interested in Mr. Sacher's participation in it.

. . . . . .

81 Q. Mr. Sourwine, I think that at the conclusion of yesterday's session my questions relating to the interest of the committee in the activities of Mr. Sacher in the Matusow matter, by which I mean the change in testimony of Mr. Matusow before Federal Courts, my questions have not been sufficiently clear fully to bring out all of the testimony at your hands on that subject, and I wonder, Mr. Sourwine, if you could tell us as briefly as possible just what the interest of the committee was at the time it called Mr. Sacher with respect to Mr. Sacher's participation or alleged participation in Mr. Matusow's change of testimony.

. . . . . .

82 The Witness: Mr. Matusow's book was published by Cameron and Kahn, a firm composed of Angus Cameron and Albert E. Kahn.

The committee knew that Mr. Sacher had attended the meeting at Mr. Cameron's house.

The Court: What do you mean by "knew" that "the committee knew"?

The Witness: The committee, sir, had evidence from a source which the committee considered reliable.

The Court: I see.

The Witness: I am sorry. It was not—

The Court: I want to get those things precise.

The Witness: Yes. It was not evidence. That Mr. Sacher had in 1947 attended a meeting at Mr. Cameron's home which was also attended by one Ann Burlak, a known Communist section leader.

By Mr. Hitz:

Q. In what city, sir? A. In Boston, Massachusetts.

That gave a connection between Mr. Sacher and the firm which had published the Matusow book.

83 The committee had a great deal of information and evidence that this whole Matusow matter was part of a conspiracy to impugn the motives and discredit Government witnesses and to hamper the investigation, the continuing investigation of Communism.

The committee had information that a number of persons, including Mr. Sacher, who had been former members of the Lawyers Section of the Communist Party under Abraham Unger, were connected with this case.

The committee had information that there was in existence a lawyers commission or a law commission of the Communist Party, being a group of high functionaries of the party to whom had been delegated the formulation and oversight of legal strategy for the party; and that included in that group were Nathan Witt and Harry Sacher; and that probably one of those two was the head of it.

The committee had information that the affidavit in the case of Elizabeth Gurley Flynn and others which had been given by Mr. Matusow had in fact been notarized by one Robert Zavell Lewis who identified himself as associated with Mr. Sacher in the Flynn case; that the affidavit had in fact been typed by Mr. Lewis' wife at the home of Albert E. Kahn after having been dictated in substantial part by Mary Kaufman, another attorney associated in the Flynn case.

All of these circumstances together made the committee extremely anxious to get Mr. Sacher's testimony as to what he knew about this matter, and also to ascertain what Communist connections Mr. Sacher would say he had, and what he would be able to tell the committee about the part, if any, which the Communist Party took, to his knowledge, in this whole conspiracy.

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. . . . . .

Q. Have you now related, Mr. Sourwine, all that you can recall that was in the possession of the committee at the time Mr. Sacher was called as a witness, relating to the reasons why Mr. Sacher was called? A. I am not sure that I have, but I think I have hit the important things.

. . . . . .

Q. All right, sir.

Now, prior to and at the time that Mr. Sacher was called as a witness on April, 1955 before the subcommittee, had the committee considered any possible legislative action with respect to restrictions upon the appearance before Government agencies, Federal Courts, and Commmittees of Congress of persons who were then members of the Communist Party? Had that subject been under consideration?

85

Mr. Delany: May it please the Court, I object to that question specifically unless it is shown that the committee in scheduling these hearings stated in expressing the scope of the committee that this was one of the objects.

The Court: This doesn't go to admissibility. This might go to probative value.

Objection overruled.

The Witness: The committee had discussed at various time for several years prior to Mr. Sacher's appearance such legislation, or portions of such legislation. The first suggestions of that nature that I remember had come from Senator McCarran in early 1951.

. . . . . .

86 Q. Moving on to a time subsequent to Mr. Sacher's appearance, did this general subject of restrictions upon members of the Communist Party as advocates before Government agencies, Federal Courts and Committees of Congress become formalized into a bill introduced into the Senate of the United States?

Just answer yes or no. A. Yes.

Mr. Delany: I object to the question and ask that the answer be stricken out.

The Court: Objection overruled.

By Mr. Hitz:

Q. That was action taken subsequent to Mr. Sacher's appearance, sir?

The Court: The bill would speak for itself, if you wish to offer the bill.

Mr. Hitz: Would you mark this for identification?

The Deputy Clerk: Government Exhibit No. 10 for identification.

Mr. Hitz: It is Senate Bill 2326, dated June 27, 1955.

(Senate Bill 2326, dated June 27, 1955 was marked as Government Exhibit No. 10 for identification.)

87 By Mr. Hitz:

Q. Is Government for identification Exhibit No. 10 the bill that you have referred to that eventualized after Mr. Sacher's testimony? A. This bill was introduced after Mr. Sacher's testimony. Such a bill was in the course of

drafting at the time he testified. I made reference to it during the hearing.

Q. Did you draft it? A. I assisted in drafting it, sir.

• • • • • • • • • • •

89 Government Exhibit 9, Your Honor, might I read the designation of persons to comprise the subcommittee?

The Court: Very well.

Mr. Hitz (Reading):—

"This is to certify that at the meeting of the Senate Committee on the Judiciary on Monday, February 7, 1955, the following members being present,

Senator Kilgore, Chairman
Senator Eastland
Senator Kefauver
Senator Hennings
Senator Daniel
Senator O'Mahoney
Senator Wiley
Senator Langer
Senator Jenner
Senator Watkins
Senator Butler,

the following members were appointed to the Special Subcommittee on Internal Security:

Senator Eastland (Chairman)
90 Senator Johnston
Senator McClellan
Senator Hennings
Senator Daniel
Senator Jenner
Senator Watkins
Senator Welker
Senator Butler."

• • • • • • • • • • •

93 Q. Mr. Sourwine, would you be good enough to tell us what members of the subcommittee were present at the time that Mr. Sacher testified on April 19th? A. Senator McClellan and Senator Jenner were present throughout the testimony. • • •

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96 **Testimony of Harry Sacher, Attorney, New Rochelle, New York**

Mr. Sourwine. Will you give your name and your present home address, please?

Mr. Sacher. Harry Sacher, 111 Taymill Road, New Rochelle, New York.

Mr. Sourwine. You are a lawyer, are you?

Mr. Sacher. I am.

Mr. Sourwine. And where are your legal offices?

Mr. Sacher. My law offices are at 342 Madison Avenue, New York City.

Mr. Sourwine. Do you practice alone or in partnership?

Mr. Sacher. I practice alone.

Mr. Sourwine. Do you have any associates in your

97 office?

Mr. Sacher. Well, there are lawyers in the suite. They are not my associates in the practice of the law. They occupy space in the same suite where I have my offices.

Mr. Sourwine. Who are those attorneys, sir?

Mr. Sacher. Mr. Frank Donner—

Mr. Sourwine. Pardon my interruption. Do you object to having pictures taken during your testimony?

Mr. Sacher. No, provided they are good looking. I have no objection to them.

Senator McClellan. The Chair would prefer that the pictures, if you want to take them, get them over with right away, because it does interfere with our concentration here. Proceed to make a few and—

Mr. Sacher. Do you want me to continue with the list? I have given you the first.

Mr. Sourwine. Please.

Mr. Sacher. Mr. Frank Donner, Mr. Marshall Perlin, Mr. Arthur Kinoy, Mr. Milton Friedman.

Mr. Sourwine. Are any of those lawyers hired by you, employed by you?

Mr. Sacher. No, they are not.

Mr. Sourwine. In what way, Mr. Sacher, have you been associated with the defense of Communist cases?

98 Mr. Sacher. I do not understand your question.

Mr. Sourwine. Do you know what I mean by Communist cases?

Mr. Sacher. No, sir; I do not know what you mean.

Mr. Sourwine. Have you been associated in the defense of prominent members of the Communist Party, U. S. A.?

Mr. Sacher. Mr. Chairman, may I inquire as to the purpose of this type of inquiry? I have no desire to invoke any privileges of any kind, but it does seem to me that unless these inquiries are related to some legislative purpose, that the inquiry is improper. I am a member of the Bar of the State of New York and of the Supreme Court of the United States in good standing and I defend and prosecute cases which are brought to me and which I choose to defend or prosecute. Now, it seems to me that it can hardly be of national importance whom I defend or whom I represent, and certainly it hardly seems related to a legislative purpose and I would, therefore, object to that question on the ground that it is not a pertinent inquiry in regard to any matters that appear at the moment at least to be within the jurisdiction of the subcommittee or the committee.

Senator McClellan. Restate the question, Mr. Counsel.

99 Mr. Sourwine. In what way have you been associated with the defense of Communist cases?

Senator McClellan. The Chair thinks you can answer that. It would seem that either you have been associated with them or you have not, as counsel.

Mr. Sacher. I do not know what Communist cases are.

Senator McClellan. You have the right, of course, to practice law.

Mr. Sacher. Of course I have and I think I have a right not to be called to account anywhere for the cases that I have participated in, and I think that it is impertinent in the legal sense—of course, I am not speaking in any other sense—in the sense of not being pertinent to any legislative purpose to inquire whom or where I have defended or participated in cases.

Mr. Sourwine. Mr. Sacher, the primary purpose of the question is to identify you—if it is true—as of counsel in certain prominent cases which have involved leaders of the Communist Party.

Mr. Sacher. I object to the question on the ground that no lawyer is identified on the basis of the cases in which he appears professionally. If that is the basis of the inquiry, Mr. Chairman, I respectfully submit it is not relevant or pertinent.

Mr. Sourwine. In what other way does an attorney 100 acquire a reputation?

Mr. Sacher. I do not know what you are talking about, and now you are debating with me, and I submit I do not want to debate with counsel for the committee.

Mr. Sourwine. I will rephrase the question.

Senator McClellan. Let us see if we can work this out, Mr. Counsel. You ask him regarding specific cases in which he may have appeared in court in a particular given case.

Mr. Sourwine. Did you appear in Judge Medina's court in a trial which involved certain leaders of the Communist Party, U. S. A., as counsel for the defense?

Senator McClellan. Now you may answer that.

Mr. Sourwine. That is a matter of record.

Mr. Sacher. Of course, it is a matter of record, and that is an added ground on which I decline to answer, Mr. Chairman.

There is no occasion for the Congress of the United States to call a lawyer before it to inquire in what cases

he has participated, particularly when it is a matter of public record as to what case he participates in.

Senator McClellan. The Chair will order you to answer it. There is no reason why we have to send up there and get the public record and have it certified to
101 when you are available and can testify. Certainly there would be no objection from the standpoint of background. You are not ashamed of it?

Mr. Sacher. Mr. Chairman—

Senator McClellan. There is no reason why you cannot answer the question. The Chair orders you to answer the question.

Mr. Sacher. Mr. Chairman, I am ashamed of nothing I have done, either professionally or in my private life, but that is no reason why I should be brought to Washington to testify about it. Unless it is relevant and pertinent to some legislative purpose, I must respectfully decline, I must respectfully decline to answer the question, and I should like to ask of the Chair what legislative purpose do you state is being served by my answer to this inquiry?

Senator McClellan. Well, the Chair does not necessarily feel called upon to give you *all the information that you* may desire. This committee is constituted to perform a function for the Congress and for the country, primarily with respect to national security, and the Chair holds that any question which may be asked you regarding anything associated with the subversive elements in this country, if there are such, is a pertinent question, and it is per-
102 tinent to this inquiry. It is the duty of every American citizen to answer such questions when so interrogated under oath before this committee unless he wants to avail himself of the privilege of the Fifth Amendment of the Constitution. So the Chair will direct you to answer the question.

Mr. Sacher. Mr. Chairman, permit me to say this: That I think that an inquiry to any member of the bar concerning cases in which he has participated carries with it implicitly the notion that attorneys are accountable to the

legislative branch of the Government for the cases they handle, and I respectfully submit, Mr. Chairman, that if I decline to answer, you will realize that I decline not out of any disrespect to this committee or any wish to subvert its process, because a declination on my part will not subvert anything that this committee aims to do because, as both of us have observed, my participation in the cases, or at least the case that is being spoken of, is a matter of public record. But I do feel, and I appeal to you as a lawyer, Mr. Chairman, to give thought to the proposition that this may create a bad precedent from the point of view of the freedom of advocacy in our country. In other words, I submit to you, Mr. Chairman, that I think you should take under advisement the wisdom of calling a lawyer before you to state whether or not he has participated in certain
103 cases. I do not think it is wise to do it. I do not think it is in consonance with our notions of an independent bar, and I respectfully submit that a lawyer ought to be as immune from accountability for the cases in which he participates as a Member of Congress is for his utterances on the floor of the House, either of the Senate or of the House of Representatives.

Senator McClellan. The question that has been propounded to you is a preliminary question as a matter of background leading into further inquiry. The Chair has already stated his position. The Chair orders you to answer the question.

Mr. Sacher. All right. I will answer the question and state that I did participate in the case in question.

Senator McClellan. All right, proceed, Mr. Counsel.

Mr. Sourwine. Mr. Sacher, do you know Harvey Matusow?

Mr. Sacher. I know him in the sense that I met him for the first time in my life two days before he took the stand as a witness in support of a motion for a new trial which I was to try in the case of United States against Flynn, and others, before Judge Dimock in the United States District Court for the Southern District of New York.

Mr. Sourwine. What contact have you had with him?

104 Mr. Sacher. My contacts consisted, as I recall it, of the following: I think that I first met him on February 8, 1955. I believe that is the day. I think I saw him on the 8th of February and on the 9th of February, and then I saw him on succeeding days during which the hearing was being conducted before Judge Dimock, my recollection being that the first date of open court hearing on the motion I am speaking of was February 10, 1955.

Mr. Sourwine. Did you ever give him any documents?

Mr. Sacher. Did I ever give him documents?

Mr. Sourwine. Yes.

Mr. Sacher. No; I did not.

Mr. Sourwine. Did you ever give him any papers or other material?

Mr. Sacher. No. Not a thing.

Mr. Sourwine. Did he ever give you any documents?

Mr. Sacher. He did.

Mr. Sourwine. What documents did he give you?

Mr. Sacher. He gave me a 75 page report, that is a copy of a 75 page report, that he had given to various agencies of Government, including the Federal Bureau of Investigation and the House Committee on Un-American Activities in the fall of 1951 or the winter of 1951. The report I refer to bore the date of October 19, I

105 believe, 1951. It was offered in evidence, the report I speak of was offered in evidence by me as 'Defendant's Exhibit B' before Judge Dimock.

Mr. Sourwine. Mr. Chairman, I may say this document is in our record. Proceed.

Mr. Sacher. May I interrupt myself?

Senator McClellan. Has it been made a part of the hearing?

Mr. Sourwine. It has been.

Mr. Sacher. May I interrupt myself at this point, Mr. Chairman, to say the following: That it occurs to me again

that this is an impropriety, how gross I do not intend to say, but I submit there is an impropriety in calling me, calling counsel in the case which Mr. Sourwine mentions which is pending, undetermined, under Judge Dimock at the present time, to testify concerning that case here. Now it seems to me that if there is any matter in connection with the prosecution of that motion which is deserving of scrutiny, that it ought to be submitted to Judge Dimock in the first instance. This seems to me like a flagrant disregard of the separation of powers. After all, this motion for a new trial is of primary concern to Judge Dimock. He now has that under consideration before him. He has my briefs and the United States Attorneys' briefs.

106 Senator McClellan. The Chair may say to the witness we are not going into that case as such, of course. The primary purpose of this testimony is to establish a relationship or contact you have had with Mr. Matusow, whom this committee is investigating as to the questions relating to that, not necessarily to a case in which you are appearing as counsel.

Mr. Sacher. Mr. Chairman, my sole relationship with Matusow is limited to the case in question, United States against Flynn, et al., and I submit that anything else you may ask me about I would not know anything about.

Senator McClellan. That is your statement.

Mr. Sacher. And I am making it under oath.

Senator McClellan. That is your statement and you are making it under oath but you are subject to cross-examination on it, and that is what the committee is proceeding to do. Proceed, Mr. Counsel.

Mr. Sacher. Well, then, I submit, Mr. Chairman, that I think a foundation should be laid, if I may be so bold as to use a bit of legal terminology here, a foundation ought to be laid here for the propriety of the inquiry that is being made.

Senator McClellan. The foundation has already been laid in previous hearings for the testimony that we are

seeking to adduce this morning, and if you will be a
107 little more cooperative, we can get this disposed of
pretty soon. The question, as I told you a moment
ago, was primarily for background information and you
are going to be asked now some specific questions.

Mr. Sacher. Mr. Chairman, may I say this—I do not think that you intended to imply that I was uncooperative but have no desire to do anything but [illegible] is to answer what I honestly believe is properly asked of me, and second, to see to it that so far as I am concerned, that nothing of the rights, privileges or obligations of attorneys and counselors-at-law are violated in the hearing.

Now, certainly you cannot regard that as [illegible]

Senator McClellan. We will try to not violate that. You have not been asked any questions regarding your [illegible] except that which is a matter of record, public record.

Mr. Sacher. No, he is asking me about things which are not of public record.

Senator McClellan. He is asking you about associations and contacts with Mr. Matusow. You can [illegible] Counsel. I think it is quite proper.

Mr. Sourwine. Mr. Sacher, I must suggest that the suggestion that the proceedings here would prejudice the case in Judge Dimock's court constitute an unjustified reflection upon—

Mr. Sacher. Now, that is not true. [illegible] anything about the proceedings here. [illegible] Dimock—judgment. I think that Judge [illegible] enough not to be troubled by what [illegible] was not the basis of my objection at all.

Senator McClellan. We are not [illegible]

Mr. Sacher. All right, but I do not [illegible] that I suggested here in any way that the [illegible] for Judge Dimock would be prejudiced [illegible] thing that was interrogated about here.

Senator McClellan. [illegible]

you say that was not the intention, you did not intend to imply that, we would proceed with that understanding.

Mr. Sourwine. Mr. Sacher, the question is with regard to documents which you gave Matusow or he gave you. You said you had given him none, that he had given you some and you named one.

Mr. Sacher. That is right.

Mr. Sourwine. Did he give you any others?

Mr. Sacher. Yes, he did.

Mr. Sourwine. Will you tell us about them?

Mr. Sacher. He gave me, in addition to this Defendant's Exhibit B, some sheets of paper which bore
109 the names of a number of people. I do not know the exact number. But these sheets of paper were part of, maybe 28 sheets which he turned into the FBI, and which I think were received in evidence before Judge Dimock as Defendant's Exhibit M.

Mr. Sourwine. These documents, Mr. Chairman, will be offered for our record at a later time.

Go ahead. Any others?

Mr. Sacher. In addition, he also gave me a diary, that is, these were loose sheets, the first sheet of which was dated, I believe, sometime in 1948, and my present recollection is that the next sheet in this group of sheets was dated sometime in 1950, and then there was a group of sheets running fairly consecutive from, I believe it was sometime in December, 1951, to the end of April, 1952.

Now, that is this diary that I am speaking of, and portions of it were introduced into evidence before Judge Dimock as Defendant's Exhibit A-1 to, I believe, something like 3, 4, or 5. I do not recall.

Mr. Sourwine. This document, Mr. Chairman, will be identified by Mr. Matusow for our record when he appears before us.

Any others, sir?

110 Mr. Sacher. Well, there were other pieces of paper that he gave me. There were, what he called Q and

A sheets used in the preparation of his testimony before the SACB in one or more cases that he was a witness in before that body, and my recollection is that those sheets were offered in evidence but not received. They were marked for identification. My recollection is those were defendant's Exhibits E, F, and G, for identification.

Mr. Sourwine. Any others?

Mr. Sacher. In addition there was a list of books or pamphlets which I think was Exhibit H, defendant's Exhibit H either for identification or in evidence, which he had, he said, furnished to the United States Attorney in the course of his preparation as a witness in the Flynn case. Now there may have been other pieces of paper which, at the moment, I do not recall.

Mr. Sourwine. That is all you remember?

Mr. Sacher. But I think those are the main papers in any event.

Mr. Sourwine. Those are all you know of now, all that you now recall?

Mr. Sacher. Those are all I presently recall.

Mr. Sourwine. Did Mr. Matusow give you an affidavit made by him?

Mr. Sacher. Not me. Not me.

111 Mr. Sourwine. Do you know to whom he gave that affidavit?

... Sacher. I do not. I was here in Washington at the time that affidavit was executed and delivered, and I do not know of my own knowledge, nor do I even know by hearsay, as to whom precisely he delivered it to.

Mr. Sourwine. Now, by that affidavit, do you mean an affidavit which he gave recanting certain testimony he had given in the Flynn case?

Mr. Sacher. That is what I understood you to refer to.

Mr. Sourwine. Did you ever at any time discuss with Mr. Witt the matters of that affidavit?

Mr. Sacher. I did not.

Mr. Sourwine. At no time?

Mr. Sacher. No, sir, not prior to its execution. I may have spoken to him subsequently in the course of the hearing of the motion because he was interested in the hearing before Judge Dimock as counsel for Jencks, and he was in court and I may have had conversations with him about it.

Mr. Sourwine. Did you have anything to do with the phrasing or writing of the affidavit, Mr. Sacher?

Mr. Sacher. Nothing. I had nothing to do with it.

Mr. Sourwine. Did you have anything to do with
112 the procuring of the affidavit?

Mr. Sacher. I had not a thing to do with it.

Mr. Sourwine. Do you know with whom, among defense counsel, that matter was discussed on behalf of Mr. Matusow or by Mr. Matusow?

Mr. Sacher. I do not. I should say by way of explanation that I was engaged in a trial right here in the District of Columbia before Judge Schweinhaut from January 10 to February 3, inclusive, and only got to my home on weekends and so that I had my hands full here in the District and other people took care of what had to be done in New York.

Mr. Sourwine. Mr. Sacher, have you defended Gus Hall, a Communist leader and bail jumper?

Mr. Sacher. I defended Gus Hall.

Mr. Sourwine. Mr. Sacher, have you ever served a prison sentence?

Mr. Sacher. Mr. Chairman, is that question related to some legislative purpose? I wonder.

Senator McClellan. The chair will hear counsel. I was not just certain what the purpose of it was.

Mr. Sourwine. Mr. Chairman, among the measures under consideration by this committee is proposed legislation for the purpose of fixing additional standards with respect to the practice of law in the Federal Courts.
113 Among the suggestions for inclusion in such legislation is one which would prohibit members of the Communist Party from practicing in Federal Courts. It is

germane to the consideration of such legislation to inquire into the circumstances involving the practice of law in Federal Courts by persons who are Communists and by persons who are defending Communists. I believe that the inquiries made here and other inquiries which have been made and which will be made in this Matusow case have bearing upon that legislative problem now pending before the committee.

Mr. Sacher. I would like to be heard, Mr. Chairman, if I may.

Senator McClellan. The Chair thinks that you should lay a foundation for that first by asking the witness if he is a member of the Communist Party, if he has ever been, and so forth.

Mr. Sacher. Mr. Chairman, may I be heard, please?

Senator McClellan. Briefly.

Mr. Sacher. Mr. Chairman, my understanding, when I came here was, as given to me by those who served the subpoena to me, that I was going to be interrogated concerning the Matusow recantation. I believe, and I say this with as much of a sense of responsibility as thirty years of practice at the bar have given me, that I have
114 established rather conclusively by evidence other than Matusow's own recantation before Judge Dimock, that he lied and lied outrageously at the Flynn trial, and I should like the opportunity before I leave the stand today to file with your committee, Mr. Chairman, copies of the briefs that I filed with Judge Dimock and copies of some 13 exhibits that I prepared to demonstrate the falsity of Matusow's testimony at the Flynn trial.

The suggestion that my political beliefs or associations are to be inquired into seems to me to be diversionary in character. I maintain that Matusow lied and that, if this committee wants to know how our judicial procedures may be improved, let them wait until Judge Dimock passes judgment on everything that transpired before him. Let there not be made here an attempt to prejudice the determination not only by Judge Dimock, but by the people of the

United States as to whether or not Matusow lied when he testified at the Flynn trial. Now I submit, Mr. Chairman, that this—if I may say so—that this is doing a disservice to the administration of justice.

Senator McClellan. That is what we are trying to find out. Now let us proceed, Mr. Counsel, and ask the proper questions to lay the foundation for this.

Mr. Sourwine. Are you, Mr. Sacher, a member of
115 the Communist Party, U. S. A.?

Mr. Sacher. Mr. Chairman, I have been called here because of my representation of the defendant in the United States against Flynn on a motion for a new trial on the ground that Harvey Matusow committed perjury in that trial. I have answered and am prepared to answer all questions concerning my participation in that case. I refuse. I refuse categorically, Mr. Chairman, to discuss my beliefs, religious, political, economic, or social. I do not do so on the ground of the Fifth Amendment. I do so because it is inconsistent with the dignity of any man to be compelled to disclose his political, religious, economic, social, or any other views. And I respectfully submit that an inquiry to me concerning this matter is not pertinent to anything with which this committee is concerned, and is not relevant to any inquiry that may properly be made of me. And I therefore decline on the ground that I cannot with any regard for my own self respect, do otherwise, Mr. Chairman.

Senator McClellan. Well, the Chair does not think that it is beneath the dignity of a good citizen of the United States to answer a question as to whether he is a member of an organization that seeks the overthrow of this Government by force and violence and therefore, the
116 Chair propounds to you now the question, Are you now a member of the Communist Party of the United States?

Mr. Sacher. Mr. Chairman, medieval inquisitors also thought there was no impropriety in asking those whom they regarded as heretics to answer the question.

Senator McClellan. The Chair does not care for a lecture. The Chair asked you a question.

Mr. Sacher. And I decline to answer that question, Mr. Chairman.

Senator McClellan. The Chair orders you to answer the question.

Mr. Sacher. I decline to answer that question on the grounds I have already stated.

Senator McClellan. The Chair asks you another question. Have you ever been a member of the Communist Party of the United States?

Mr. Sacher. I respectfully submit, Mr. Chairman, that my conscience dictates to me that I shall not, under your compulsion or anybody else's compulsion, make any disclosure of any of my beliefs, political, religious, economic, or social, past or present, and I decline to answer your question.

Senator McClellan. The Chair orders you to answer the question.

Mr. Sacher. I respectfully decline to answer it.

Senator McClellan. The Chair asks you another
117 question. Have you ever been a member of any organization, Communist Party or by any other name, that advocates and seeks the overthrow of the Government of the United States by force and violence?

Mr. Sacher. I will say to the Chair that I have never been a member of any organization which I believed to be a teacher or advocate of the forceable or violent overthrow of the Government of the United States.

Senator McClellan. All right. You may proceed.

Mr. Sourwine. Have you ever served a prison sentence?

Mr. Sacher. I have, sir. I am sure that that will be most illuminating for the legislative purposes that the committee has in mind.

Mr. Sourwine. What was that sentence for?

Mr. Sacher. I was sentenced for contempt of court.

Mr. Sourwine. Have you ever been disbarred?

Mr. Sacher. No, sir.

Mr. Sourwine. Have you ever been ordered disbarred?

Mr. Sacher. An order was made but was reversed by the Supreme Court of the United States. You see, Mr. Chairman, counsel is not interested in eliciting the truth. He is interested in smearing me, and so although he knows that the Supreme Court of the United States reversed my disbarment, he asks me only whether I was disbarred,
118 and I respectfully submit it is unworthy of the great function of a Senate investigating committee to do that.

Senator McClellan. The Chair thinks you have a perfect right to make that explanation.

Mr. Sacher. I beg your pardon?

Senator McClellan. The Chair thinks you have a perfect right to make that explanation, sir.

Mr. Sacher. Thank you, Mr. Chairman. Thank you.

Senator McClellan. Proceed.

Mr. Sourwine. Did you, Mr. Sacher, ever attend a gathering of leaders of the Communist Party, U. S. A.?

Mr. Sacher. Well, I defended leaders of the Communist Party of the United States of America in United States against Dennis, and I imagine I must have attended such meetings, certainly. That is what you do when you defend clients, Mr. Counsel. You meet with them occasionally.

Mr. Sourwine. Did you ever attend a gathering of leaders of the Communist Party who were not your clients?

Mr. Sacher. I am not aware of it.

Mr. Sourwine. Did you attend a birthday party for Alex Bittelman in January, 1950?

Mr. Sacher. I do not remember.

Mr. Sourwine. Did you attend a birthday party for Alex Bittelman in January, 1950, in the Board Room
119 at the Communist headquarters on the ninth floor in New York?

Mr. Sacher. I don't remember. I should say to you, Mr. Counsel, that you are speaking of a period when the Dennis case was in full progress, and I cannot say whether I was

in a building where a birthday party may or may not have been taking place at the time.

Mr. Sourwine. Did you attend a birthday party for Alex Bittelman at which Henry Winston proposed a toast, 'Comrades, let's drink a toast to Alex'?

Mr. Sacher. I have no recollection of that.

Mr. Sourwine. Do you have any connection with the legal commission or law commission of the Communist Party?

Mr. Sacher. I do not know of any such organization so I cannot say anything about it.

Mr. Sourwine. Are you now or have you ever been a member of the Lawyers' Section of the Communist Party, U. S. A.?

Mr. Sacher. Mr. Chairman, I have declined before and I decline again—

Senator McClellan. You are ordered to answer the question.

Mr. Sacher. On the grounds that I have already stated so I need not take the time of the committee, and
120 I reemphasize that there is nothing in the purposes of the committee or the Congress which comprehends the validity, the pertinency or the relevance of an inquiry to me concerning my political beliefs or affiliations. I respectfully decline to answer that question.

Senator McClellan. May I say to you that I have great respect for the law profession. I have tried to practice a little law myself. But when we come to the security of our country, an organization that is dedicated obviously to subversive purposes as an objective, I think it becomes the duty of the Congress of the United States and also the duty of the executive branch of the Government to try to ferret these things out and expose them if they relate directly to the national security—associations, at some time, and the knowledge of them, may help the Congress or help other officials of the Government to preserve national security. For that reason the Chair thinks that the question is proper and directs you to answer it.

Mr. Sacher. Mr. Chairman, I respectfully say to you that, without any desire to be immodest, I think that in the defense of those that have been charged under the Smith Act or under the Internal Security Act of 1950, I have acted in the best traditions of the profession by defending
121 the rights of people to speak, to publish, to meet under the First Amendment.

Senator McClellan. This question was not related to your defending anyone in court. The question was related to your being present or being a member of a group of lawyers, presumably, ostensibly from the question—I do not know what the answer is—dedicated to the Communist Party.

Mr. Sacher. Mr. Chairman, for thirty years I have practiced law in the State of New York and elsewhere in the United States, and I think again, without being subject to the charge of being immodest, that I have done a yeoman's share of the work that had to be done on behalf of the working men and women of our country. And I feel that my life is a living testimonial to what I am and to what I have done for my country, and I respectfully submit it is a late time of the day for me to have to appear before anybody, after thirty years of honorable practice, to testify to my loyalty to the democratic institutions of the United States, and I unswervingly and unhesitatingly tell you my devotion is to the best interests of my country. And I believe that I am serving those interests when I refuse to bend the knee to an inquiry concerning my innermost thoughts and beliefs, whether they be on politics, religion or anything else. My conscience dictates to me that
122 I shall not, under compulsion, answer today any more than John Freeborn Lilliburne answered in the 1640's to the Court of Star Chamber on the same grounds, Mr. Chairman, on the grounds that it is incompatible with the dignity of the individual to make compulsory disclosure of his thoughts and his ideas and his beliefs, I must respectfully decline to answer that question.

Senator McClellan. You have a right to decline, of course, if you wish to invoke your constitutional privilege.

Mr. Sacher. I am invoking my rights as a man and my dignity as a man and I am not invoking any privileges against self incrimination. I have never done anything and I pledge you, Mr. Chairman, I shall never do anything which, so far as I can help, will expose me to any criminal charges.

And I say to you that I speak, not from fear of incrimination or prosecution. I speak only from the dictates of conscience. And I ask all Americans to join me in resisting inquiries of this kind, for when the day comes when Americans will resist inquiries of this kind, we shall once again witness a restoration of those liberties which we so long enjoyed prior to the advent of the suppression of them.

Senator McClellan. Now you have made your
123 speech. You are ordered to answer the question.

Mr. Sacher. I respectfully decline, Mr. Chairman.

Senator McClellan. All right, proceed, Mr. Counsel.

Mr. Sourwine. Mr. Chairman, may I ask that the witness be ordered to answer that question?

Senator McClellan. I ordered the witness to answer the question. He declined. The record so shows. Proceed.

Mr. Sourwine. Did you ever attend a Communist meeting at the home of Angus Cameron?

Mr. Sacher. I don't think I have ever been at the home of Angus Cameron, that is, at least I have no recollection of having been at his home.

Mr. Sourwine. Did you, on November 22, 1947, attend a Communist meeting at the home of Angus Cameron at which time there was present besides yourself, one Ann Burlak, B-u-r-l-a-k, a district organizer for the Communist Party?

Mr. Sacher. I do not think I know who Ann Burlak is. I really don't.

Mr. Sourwine. Now, answer the question, please.

Mr. Sacher. I can't. I don't know who you are talking about. How can I answer it?

Mr. Sourwine. Did you on November 22, 1947, attend a Communist meeting at the home of Angus Cameron?

Mr. Sacher. I do not know. I certainly did not
124 attend any Communist meeting, but I do not know whether I was ever at Mr. Cameron's home. Where was that?

Mr. Sourwine. In Boston, sir.

Mr. Sacher. I have a recollection of being at Mr. Cameron's home once, I think in Boston.

Mr. Sourwine. Was that on or about November 22, 1947?

Mr. Sacher. I have no recollection, not only of the month or the day, but even the year. I have no recollection.

Mr. Sourwine. Do you say categorically that you have never attended a Communist meeting at Mr. Cameron's home?

Mr. Sacher. I was at Mr. Cameron's home. I don't know what meeting took place there, whether it was Communist or not.

. . . . . .

125 Mr. Hitz: That is about right. We can shorten that up, Your Honor, too.

For the record, may the reporter conclude where a little above the middle it is stated "Senator McClellan. You are excused, Mr. Sacher."

Would you terminate your quotation on 844 with that, please?

126 "Mr. Sacher. Mr. Chairman, may I ask you to be good enough to receive in evidence copies of the brief which I filed with Judge Dimock and copies of exhibits which I submitted with the brief to demonstrate that Matusow testified falsely in the Flynn trial?

Senator McClellan. You may submit your documents. They will be referred to the committee for inspection and for such proper use of them as the committee thinks is advisable.

Mr. Sacher. Thank you. May I hand them to you, Mr. Chairman?

Senator McClellan. You may; yes, sir. Lay them right down on the table. We will get them, all right. All right. Are there any other questions, Mr. Sourwine?

Mr. Sourwine. I have no more questions of this witness.

Senator McClellan. You are excused, Mr. Sacher."

By Mr. Hitz:

Q. Mr. Sourwine was Mr. Sacher asked a question in the following language:

"Question. Are you, Mr. Sacher, a member of the Communist Party, U. S. A.," on this occasion?

Mr. Delany: May it please the Court, the record is all in there. It seems to me there is no need to repeat that here.

127 The Court: I think in a sense this is cumulative, but this being the very vitals of the case, if the Government wants to put on cumulative testimony I am going to let the Government do it.

Mr. Hitz: Thank you, Your Honor.

The Witness: He was asked that question.

By Mr. Hitz:

Q. Also, "Have you ever been a member of the Communist Party of the United States?" A. He was asked that question.

Mr. Delany: I assume, Your Honor will grant me an objection to all of this cumulative testimony?

The Court: Oh, yes.

By Mr. Hitz:

Q. And, "Are you now or have you ever been a member of the Lawyers' Section of the Communist Party, U. S. A.?" A. He was asked that question.

Q. Did he answer those questions?

Mr. Delany: I object, Your Honor.

The Court: Objection overruled.

By Mr. Hitz:

Q. Did he, sir?

The Court: He may answer.

The Witness: He declined to answer, sir.

By Mr. Hitz:

128 Q. Did he raise the question of the Fifth Amendment as a reason for refusing to answer any one of those questions, sir?

Mr. Delany: I object, Your Honor, again because the record speaks for itself.

The Court: Yes. I understand. This is cumulative, but I am going to allow it.

The Witness: He did not claim any Fifth Amendment privilege. On the contrary, he disavowed any intention to claim the Fifth Amendment.

Mr. Delany: The Court understands that my objection is not only to this question that it is cumulative, but the witness may be mistaken.

The Court: He may be.

Mr. Delany: The record speaks for itself.

The Court: Now just a moment. All witnesses may be mistaken. That doesn't make their testimony inadmissible. It is entirely competent for a witness who heard testimony given to state his recollection as to what the testimony was, not as proof of the fact contained in the testimony, but as proof of the fact that the testimony was given or refused, if that is the issue in the case.

Mr. Hitz: I am going to offer now Government's Exhibit No. 10 for identification, which is the Senate Roll which has been referred to this morning.

129 Mr. Delany: I object to this, Your Honor, it is irrelevant.

The Court: Let me see the exhibit.

(Government's Exhibit No. 10 for identification was handed to the Court.)

The Court: Had you completed your statement?

Mr. Delany: Yes, it is irrelevant.

The Court: The objection is overruled. The bill is admitted on the issue of pertinency of the questions addressed to the witness, that is, addressed to the defendant as a witness. It tends to show that the testimony or the questions related not only to the subject matter that was within the legislative jurisdiction of the Congress, but also to a subject matter that was in regard to which legislation was then being actively considered. It may be admitted.

(The document heretofore marked for identification was received in evidence as Government Exhibit No. 10.)

Q. Mr. Sourwine, do you have a copy of

The Court: The date is April 6, 1956, but the Court will take notice of that.

Mr. Hitz: Yes.

I still want to ask [illegible]

BY MR. HITZ:

Q. Do you have a copy of [illegible]?

A. Yes.

Q. It is dated April 6, 1956, [illegible] appears on the front page?

A. Yes, sir.

Q. Would you be good enough to tell us whether or not [illegible] that date?

A. That is the date of the cover letter with which the report was first sent to the printer for galleys.

Q. And subsequently [illegible]?

A. Yes.

Q. I would ask you now, [illegible]

folio 73 to 238 went to the printer. That second batch contained the first draft of the discussion of Mr. Sacher's participation in the case.

On May 17, 1955 a first draft of conclusions and recommendations was sent to the printer.

Q. A little more slowly, sir. A. After that time there were a number of galley revisions on individual galleys.

1:38 On July 14, 1955 the galleys were returned to the printer for page proof after a majority of the subcommittee approved the report.

The final page proof was returned to the printer with the last corrections on December 23, 1955, and subsequent to that the report was issued.

Q. In what month was it ultimately released for publication? A. In January, 1956.

Q. Does it have in the material the testimony of Mr. Sacher on April 19, 1955? A. It does. As a matter of fact this report quotes from the page and refers to the page of the printed record of Mr. Sacher's testimony.

. . . . . .

Mr. Hitz: And again with particular reference to the mention of the name of Harry Sacher in the middle part of the paragraph immediately above the middle of page 59.

The next passage is on page 86, a portion of the report entitled "Harry Sacher Defies the Subcommittee," and the conclusion of that portion on page 87.

The Court: Now, I am wondering if that is admissible. This is a comment on the charge which is before the Court in this case, the committee's comment on that charge. I have some question in my mind whether that would be admissible.

Mr. Hitz: May I be heard on that?

The Court: Yes.

Mr. Hitz: The resolution that creates these powers [illegible]

the duty upon that committee or a subcommittee of it to investigate and report on the certain designated subject.

This report and this immediate passage that we are referring to here is offered for the purpose of showing that this subcommittee in fact did use the testimony of Mr. Sacher in its report under the resolution which indicates a legislative purpose in the committee in obtaining the testimony and later in the use by way of reporting it to the Congress.

141 The fact that it should contain comments and conclusions I don't think makes it inadmissible for the purpose of showing that there was embodied in a report in which there were recommendations for legislation the background for the recommendations.

The Court. The Court will admit it merely for the purpose of showing that the testimony of Sacher was used by the committee in connection with its legislative work.

Mr. Hitz. Precisely.

The Court. But will for the purpose of this case not consider the comments contained in that passage.

Mr. Hitz. Yes, Your Honor. That is the purpose of it, and we are happy to adhere to that restriction.

143 Mr. Hitz. And of course if a [illegible] committee [illegible] consideration. I would like to refer next and particularly to Plaintiff's Exhibit [illegible] which we have marked as the [illegible] exercise in the same fashion under the pertinent and the legislative purpose of [illegible].

I hasten to [illegible] recommendation [illegible] three [illegible] context [illegible] to raise [illegible].

The [illegible] not a [illegible].

Mr. [illegible]

Hous[illegible]

The Court: You want that in there?

Mr. Delany: I do.

The Court: Surely, you may have it. I thought I was protecting the defendant's rights by excluding it.

• • • • • • • • • •

153 Cross-Examination

By Mr. Delany:

154 Q. Mr. Sourwine, when did the subcommittee hold hearings on the Institute of Public Relations, what year was that? A. The hearings on the Institute of Pacific Relations were held in 1951 and '52.

Q. Did you call Mr. Fanelli as a witness to testify about the documents that you say were given by the department of Immigration and were released by Mr. Fanelli? A. Yes, sir. I stated that earlier. We called him on April 12th.

The Court: I think we can shorten this if you will just answer yes without elaborating, if yes is a proper answer.

The Witness: Yes, Your Honor.

By Mr. Delany:

Q. Did you at that time—

The Court: We are trying to save your time.

By Mr. Delany:

Q. Did you at that time call Mr. Sacher as a witness? A. No.

Q. To testify at this inquiry? A. No.

• • • • • • • • • •

213 **Ruling by the Court**

The Court (Holtzoff, J.): This is a trial by the Court without a jury of an indictment charging the defendant Harry Sacher with the offense generally known as contempt of Congress, namely, that he willfully refused to answer certain questions addressed to him as a witness by a subcommittee of the Committee on the Judiciary of the United

States Senate, the function of the subcommittee being to investigate the administration of the Internal Security Act, and other Internal Security Laws, as well as subversive activities.

The indictment charges that the defendant refused to answer questions addressed to him as a witness at a hearing of this subcommittee on April 19, 1955. The questions are as follows:

"Are you, Mr. Sacher, a member of the Communist Party, U. S. A.?

"Have you ever been a member of the Communist Party of the United States?

"Are you now or have you ever been a member of the Lawyers' Section of the Communist Party, U. S. A.?"

The Committee on the Judiciary of the United States Senate is one of its permanent standing committees, and is established by statute as well as by the standing rules of the Senate. By a resolution of the Senate adopted on December 21, 1950, known as Senate Resolution 366, the

214 Committee on the Judiciary or any duly authorized subcommittee thereof was authorized and directed to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effects of subversive activities in the United States, its territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence. By a resolution adopted on March 18, 1955, known as Senate Resolution 58, the creation of this authority of the Committee on the Judiciary was reaffirmed and imple-

mented by powers conferred on the committee to make certain expenditures and employ certain assistants and consultants.

On January 20, 1955, by a resolution of the Committee on the Judiciary a special subcommittee to make investigations under Senate Resolution 366 was continued during the 84th Congress, which is the Congress referred to in this indictment. On February 7, 1955, at a meeting of the Senate Committee on the Judiciary a certain number of members of the committee were appointed to this
215 special subcommittee. Among them were Senators McClellan and Jenner. On the same day at a meeting of the subcommittee a resolution was adopted providing that a quorum of the subcommittee for the purpose of taking sworn testimony should consist of not less than two Senators of said subcommittee. Authority to fix the quorum had been previously granted by resolution of the full committee.

The proof shows that on April 19, 1955 at a hearing conducted by the subcommittee at which a quorum was present throughout, consisting of Senator McClellan and Senator Jenner, the defendant was called and sworn as a witness. He was asked a number of questions, among them the three questions involved in this case.

As to these questions the transcript of the hearing shows that the following proceedings took place.

He was questioned by Mr. Sourwine, the general counsel of the committee:

"Are you, Mr. Sacher, a member of the Communist Party, U. S. A.?"

The defendant declined to answer, giving a rather long explanation for his action, the pertinent parts of the explanation being as follows:

"I refuse. I refuse categorically, Mr. Chairman, to discuss my beliefs, religious, political, economic or social. I do not do so on the ground of the Fifth Amend-

216 ment. I do so because it is inconsistent with the dignity of any man to be compelled to disclose his political, religious, economic, social, or any other views. And I respectfully submit that an inquiry to me concerning this matter is not pertinent to anything with which this committee is concerned, and is not relevant to any inquiry that may properly be made of me. And I therefore decline on the ground that I cannot with any regard for my own self respect, do otherwise, Mr. Chairman."

Senator McClellan, who was presiding, then repeated the question:

"Are you now a member of the Communist Party of the United States?"

The defendant responded:

"And I decline to answer that question, Mr. Chairman.

"Senator McClellan. The Chair orders you to answer the question."

The defendant again said:

"I decline to answer that question on the grounds I have already stated."

Then the Chairman asked the defendant the second question involved in this case:

"Have you ever been a member of the Communist
217 Party of the United States?"

The defendant's reply was:

"I respectfully submit, Mr. Chairman, that my conscience dictates to me that I shall not, under your compulsion or anybody else's compulsion, make any disclosure of any of my beliefs, political, religious, economical or social, past or present, and I decline to answer your question.

"Senator McClellan. The Chair orders you to answer the question.

"Mr. Sacher. I respectfully decline to answer it."

Then the general counsel of the committee asked the third of the questions involved in this case:

"Are you now or have you ever been a member of the Lawyers' Section of the Communist Party, U. S. A.?"

The defendant's reply was:

"Mr. Chairman, I have declined before and decline again.

"Senator McClellan. You are ordered to answer the question."

The defendant stated:

"On the grounds that I have already stated so I need not take the time of the committee, and I reemphasize that there is nothing in the purposes of the committee or the Congress which comprehends the validity, the pertinence or the relevance of an inquiry to me concerning
218 my political beliefs or affiliations. I respectfully decline to answer that question."

In each instance the question was asked, the witness declined to answer, and then he was directed to answer. Hence it is clear that the committee did not acquiesce in the refusal. Consequently the procedure prescribed in Quinn v. United States, 349 U. S. 155 has been followed and its requirements complied with.

The only question that is being contested in this case is whether the subcommittee had the right to ask these questions of the witness. That general subject must be subdivided into several parts. First: Was the subject of investigation of Communism within the legislative function of the Congress? Obviously the answer is in the affirmative. The Congress has legislated on the subject of Communist activities and other activities tending to overthrow the Government by force and violence, as for example, in the Smith Act. This aspect of the matter does not require prolonged discussion. The legality of the creation of the committee on Un-American Activities of the House of Representatives has been often contested,

but the contest has always been resolved in favor of the committee. The same principles are applicable to the Internal Security Subcommittee of the Senate Committee on the Judiciary.

The next aspect that must be considered is whether
219 this particular matter was within the jurisdiction of the committee, which is a different question than whether the general subject was within the legislative power of the Congress. Here again the question must be answered in the affirmative, because by Senate resolution, investigation of the enforcement of the Internal Security Act, laws relating to espionage, sabotage, and the protection of internal security, and of subversive activities generally was reposed in the Committee on the Judiciary, which was clothed with the necessary power. The Committee on the Judiciary in turn delegated that authority, as it had a right to do under the resolution, to its subcommittee on Internal Security.

This brings us to the question whether the specific questions were pertinent to the inquiry. It is well established, of course, that in order to constitute a contempt of the Congress punishable under the statute, a refusal to answer queries must relate to topics that were pertinent to the inquiry that the committee or subcommittee was lawfully conducting. That the general subject concerning which the committee was inquiring was within its jurisdiction has already been indicated. The Court of Appeals has held that the Government has the burden of establishing the pertinency of the questions. But it must be borne in mind in this connection that the common law rules of evidence that prevail in the courts are not binding on Congressional Committees and in fact have no place
220 in hearings conducted by Congressional Committees. Technical relevancy as known at common law is not therefore the test. The terms "pertinency" and "relevancy" are used in the sense of being germane to the subject into which inquiry is being made.

Primarily it is the committee or the subcommittee conducting the hearings that must make the decision whether a particular question is germane to the inquiry and whether the information sought would be helpful. The decision of the committee must be given considerable weight. Necessarily it is subject to Court review, when an attempt is made to prosecute the witness for refusing to answer a question propounded to him, but the decision of the committee that the question is pertinent, and the direction that the question be answered, will not be lightly set aside.

The Court is of the opinion that the question of pertinency of a particular interrogatory addressed to a witness has two aspects or may be approached from two different angles. There are some questions which are pertinent on their face, and their very text is sufficient to establish their pertinency. There are other questions whose pertinency does not appear except by extrinsic evidence. The Court is of the opinion that the questions involved here are pertinent on their very face. Whether a person is a member of the Communist Party or of
221 the Lawyers' Section of the Communist Party is obviously pertinent to an inquiry into activities to overthrow the Government by force and violence, because it has been held by the Supreme Court of the United States that the Communist Party is inherently an organization that seeks to accomplish this very aim. Consequently, even if the Government offered no evidence on the issue of pertinency this Court would hold and does hold that these questions are pertinent on their face.

The Government, however, has gone further in a commendable exercise of caution and submitted evidence showing the reasons for the inquiries, their specific pertinency to the subject matter that the subcommittee was investigating, and the reasons for addressing these questions to the witness. The subcommittee was investigating subversive activities. Testimony has been introduced that the subcommittee had information in its files that the defendant had been a member of a number of subversive

or Communist front organizations; that he had been a member of the International Labor Defense, which was known or believed to be supported by the Communist Party; that he participated in Communist meetings generally. Moreover the committee wanted to know whether he participated in what the committee believed were efforts of the Communist Party to discredit Government witnesses in cases involving Communists. This aspect of the
222 matter arose in connection with one Matusow, who had been a Government witness in a prosecution under the Smith Act, and who later recanted his testimony.

It must be emphasized that all of this testimony was hearsay and would be incompetent and inadmissible if it had been tendered as proof of the facts therein referred to. This testimony, however, was neither offered nor admitted for that purpose. It was admitted for the sole purpose of establishing the pertinency of the questions addressed to the witness. This testimony tended to indicate the subjects in which the committee was interested, why it was interested in those subjects, and how the questions asked of the witness related to those subjects. Obviously hearsay testimony, although not proof of the facts to which it relates, may sufficiently establish and is admissible to establish pertinency of the questions here involved and the reasons for asking them. To take an analogy out of a different field of law, reasonable ground for obtaining a warrant of arrest may be shown by hearsay information, although such information would not be admissible to prove the offense charged in the warrant.

The defendant claims that what the committee was investigating was the witness Matusow who had recanted and changed his testimony in a pending case, and the defendant further contends that to make such an
223 investigation was an encroachment on the judicial power. The Court is of the opinion that this argument involves a non sequitur, for two reasons. In the first place, contrary to the defendant's contention, the Matusow aspect of the investigation conducted by the

subcommittee was only one of the many subjects then under scrutiny and was not the sole topic in which the committee was interested. Moreover, while the Congress has no right to retry a case that is tried in a Court, and no one is more assiduous in preserving the independence of the judiciary and guarding it against encroachment than this Court, nevertheless a distinction must be drawn between an attempt to retry a case and an inquiry whether some proceedings in the case were part of an organized conspiracy to discredit Government witnesses in a series of cases as to which legislation might be possible. It may be added in passing, although it is not necessary, that the investigation did result in the drafting and the introduction of a bill on the subject of practice of law by lawyers who are members of the Communist Party. While it is not necessary to establish the existence of such a measure, that the inquiry did result in the introduction of such legislation is a conclusive demonstration of the fact that the investigation was in aid of legislation and not for any ulterior motive or some purpose in respect to which the Congress had no authority to act.

The suggestion raised in the argument of the defendant's counsel, and advanced by the defendant in a general way, that he is protected by the First Amendment against being required to answer the questions is fallacious. The First Amendment relates to freedom of speech, freedom of the press, and freedom of religion. It guarantees to every person the right to speak, subject of course to certain qualifications. It guarantees freedom to the press. It guarantees to every person the right to worship God in his own way, or not to worship Him at all. There is nothing in the First Amendment, however, which provides, directly or indirectly, that a person who is a witness or is otherwise being legally questioned may not be interrogated concerning matters covered by his freedom of speech, freedom of the press, or freedom of religion. There are many illustrations that may be cited in support of this thought. For example, on a voir dire examination

of jurors during the impaneling of a jury questions are often asked concerning personal views and personal beliefs of the jurors, and such questions are permitted if they are relevant and germane. A juror may not refuse to answer them on the ground that he was protected by the First Amendment. I suppose in connection with the census the Congress might direct the Census Bureau to conduct a religious census in order to find out how many members there were in different denominations, and if the
225 Congress did so a person could not decline to answer the question on the basis of the First Amendment to the Constitution. In other words, freedom to hold any political views or any religious views does not include the right to refuse to state what those views are. Obviously those views may not be inquired into except by lawful authority, and only when they are pertinent, but when it is done under those circumstances there is no right to refuse to answer.

It has been urged that this proceeding is an infringement on the rights and the duties of members of the bar to defend the accused. The right and the duty of a member of the bar to defend the accused in a criminal case is and must be recognized by law. It is part of the traditional function of the bar. The Constitution provides that every person accused of a crime is entitled to counsel. In order to effectuate this constitutional guarantee it is necessary to extend full and unquestioned freedom to every member of the bar to accept a retainer in any criminal case and defend the accused. But this right stops where the duty and the function of the advocate of counsel ceases. It is entirely proper to inquire into the activities of a member of the bar that are beyond the legal and ethical scope of his duties as counsel. It is entirely proper to inquire into his activities or connections with his clients that are beyond merely representing them in court. In this case the defendant
226 was not questioned concerning his retainer or concerning his representation of his clients. Conse-

quently the appeal to the ethics of the bar is out of place. He was interrogated whether he personally was a member of the Communist Party; whether he personally had ever been a member of the Communist Party; and whether he personally was or had ever been a member of the Lawyers' Section of the Communist Party. These questions had no bearing on his work for his client.

Finally we come to the question whether willfulness in the refusal to answer has been established. It has always been held beginning with the Sinclair case and ending with the recent Quinn case in the Supreme Court and in the Fields case in this jurisdiction that a refusal to answer in order to be punishable must be willful. Willfullness does not mean bad faith or an evil motive. By willfullness in this connection, as the authorities have established, is meant that the refusal was deliberate and intentional and not merely accidental or inadvertent.

The Court is of the opinion that the Government has established all of the elements of this charge beyond a reasonable doubt and finds the defendant guilty on each of the three counts.

* * * * * * * * * *

237 The Court: Harry Sacher, it is the judgment of this Court that you be imprisoned in an institution to be designated by the Attorney General of the United States for a term of six months, and that you be fined $1,000.

* * * * * * * * * *

240 **On Defendant's Motion for Hearing on Qualification of Grand Jurors**

Mr. Rein. I would like to state that with respect to one motion, the motion to challenge the grand jurors, I do not wish to argue that motion. I don't wish to withdraw it; but I feel Your Honor would be precluded from granting it, in view of the Emspak case.

The Court. In other words, you realize the Court is

duty bound to deny the motion; but you want to save the point, if possible.

Mr. Rein. That is right.

The Court. Very well. The motion is denied.

Mr. Rein. I wish to save the point, but I do not wish to argue the motion.

The Court. You want to save the point for possible review by the Supreme Court.

241 Mr. Rein. Yes.

The Court. I will deny the motion.

On Defendant's Motion to Dismiss the Indictment

* * * * * * * * * *

245 Mr. Hitz. * * *

* * * * * * * * * *

246 Our position in the case is that there is implicit in the use of the word "refusal" that it be a deliberate and intentional choice of two courses of action. If the indictment and the statute had said a failure to answer, it would then be necessary to indicate that the failure was one arising from a deliberate choice of action, that is, a mental intent as distinguished from an accident or an impossibility to comply.

But where the word "refusal" clearly connotes an intentional and deliberate failure to comply, then the element that is required here, the mental element, is in that word and we find it, we say, in the indictment, the same as we find it in the statute. There is implicit in the word "refusal," we say, an intentional and deliberate choice of action.

* * * * * * * * * *

250 The Court. This is a motion by the defendant to dismiss an indictment charging him with contempt of Congress in that he unlawfully refused to answer certain pertinent questions propounded by a Congressional Committee, as set forth in the indictment. It is urged that

failure to allege that the refusal was willful, deliberate or intentional is a vital defect in the indictment.

There is no doubt that as a matter of proof it is necessary to show at the trial that the refusal was not inadvertent; that it was intentional and willful, not in the sense that it was necessarily in bad faith, but that it was not accidental but was deliberate. Whether failure to include an allegation to that effect vitiates the indictment.
251 is another matter.

When we come to deal with sufficiency of indictments, cases dealing with technical forms of indictments decided prior to the advent of the present Federal Rules of Criminal Procedure do not constitute any authority. One of the purposes of the rules was to jettison the old rulings under which a person might go unwhipped of justice, though he had committed a serious offense, merely because the draftsman of the indictment omitted some word or phrase which did not actually affect the meaning of the accusation.

These technical decisions originated in an era when almost every felony was punishable by death and judges were looking for pretexts to prevent the imposition of the death penalty in cases in which they thought the penalty was not morally justified. That line of reasoning, of course, is now antiquated and outmoded. These very technical decisions that originated in England are no longer followed in the land that gave them birth. We no longer scrutinize indictments for technical correctness.

The contents of an indictment are governed now by Rule 7 (c) of the Federal Rules of Criminal Procedure, which provides merely that "the indictment shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."
252 It has been explained by the authorities construing this rule that the indictment must meet two tests. First, it must set forth the essential facts, with sufficient definiteness in order that the defendant may be apprised of the exact offense with which he is charged

and the precise accusation that he will have to meet at the trial. Second, it must be sufficiently definite in order that the defendant may be able to avail himself of the plea of former jeopardy in the event that an attempt should be made at a subsequent time to prosecute him for the same offense.

Obviously this indictment meets these two tests, and also complies with the requirements of Rule 7 (c). This conclusion is fortified by Rule 52 (a) of the Federal Rules of Criminal Procedure, known as the Harmless Error Rule, and which reads as follows:

"Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

Even if the contention were correct that a defect in this indictment existed as claimed by the defendant, it would not affect substantial rights. But the Court is going further and holds definitively that this indictment is not defective. It complies with the requirement of law.

253 The Court is not unmindful of the opinion to the contrary rendered in the Southern District of New York, in United States v. Lamont, 18 Federal Rules Decisions 27, at page 32. The Court observes, however, that the learned judge who wrote the opinion in that case, and for whom this court has a high personal regard, does not cite any authorities in support of his ruling that since willfulness or deliberate, intentional refusal to answer is an essential element of the offense which the Government must prove, it must also be pleaded in the indictment. The Court, with respect and deference to this learned judge, is of the opinion that this ruling is contrary to the modern trend of doing away with technicalities in indictments.

The Court has also been apprised of the fact that a brother judge in this district has arrived at the same conclusion as was reached in the Southern District of New York, in an unreported decision, but that still another judge in this district, in the very same case, has made the

same ruling as that which this Court is now making in this case.

The motion to dismiss the indictment is denied.

254 **On Defendant's Motion for Bill of Particulars**

. . . . . .

255 Mr. Hitz. I quit agree the information would be helpful. But we are not required to allege our evidence in the indictment, and we don't think our evidence is subject to being sought out in advance.

The Court. You are not required to allege evidence. The question is, however, is the defendant asking for evidence or is he asking you what you are going to contend, not how you are going to prove your contention.

Mr. Hitz. Quite right. In fact, he is asking us for our legal argument with respect to the applicability of the resolution creating this committee of the House. For example, anyone can determine from reading the resolution and recalling the decision in the Barsky case, and the Lawson and Trumbo cases, that the question whether or not the witness was a member of the Communist
256 Party when he appeared before the committee was pertinent to that inquiry.

. . . . . .

258 So we think that the defendant is not even asking for evidence, by his motion for a bill of particulars, but he is asking us for our legal argument as to how membership in the Communist Party constitutes subversive activity in light of the resolution. And we think certainly he is not entitled to it. In fact, I will amend what I said at the beginning that it might be helpful. It is hard to see how it would be helpful to him at all.

The Court. Well, I can see where it would be helpful, because he would be able to prepare for the argument that you plan to make at the trial.

Mr. Hitz. Well, it would be helpful in that he would have us bound by it as if we had alleged it in the indict-

ment, he would contend. And I think what I have said here applies as well to all three counts in the indictment the second having to do with past membership in the party, which is likewise covered by the decision in the Lawson and Trumbo cases, with respect to the other committee; and the third has to do with membership in the lawyers' section of the Communist Party, which we liken to the Lawyers' Guild or to the Screen Writers' Guild in the Trumbo case.

. . . . . .

Mr. Rein. . . .

259 I think that regardless of what the scope of the resolution might be, each particular investigation carried on by a committee must have something more specific before it to which it considers the particular questions are relevant.

This committee is a standing committee that is carrying on investigations year after year after year. I think the particular thing I am concerned about which I think would be relevant in argument before Your Honor is what particular matter would they have under inquiry in this particular investigation. And I think Mr. Hitz' statement that they had whatever could come within the scope of the resolution is precisely the kind of thing I think is not sufficient or adequate to help us prepare for trial.

The Court. Are the minutes of the particular committee hearing at which this alleged refusal took place available to you?

Mr. Rein. Yes, Your Honor.

The Court. Can't you determine that from those minutes?

Mr. Rein. If I thought I could, I would be satisfied with that. I am not satisfied, however, with Mr. Hitz' answer. He seems to think he will be bound by that and otherwise will go far beyond it.

The Court. But those minutes are available?

Mr. Rein. Yes.

The Court. That is what I wanted to be sure of.

Mr. Rein. Oh yes. The minutes are printed, the report is printed, and they are all available as public documents.

The Court. In criminal cases bills of particulars are sparingly granted. When granted, it is ordinarily for the purpose of amplifying the factual allegations of an indictment which perhaps may be too indefinite or vague. In this case, however, the motion really seeks, in the guise of particulars, not facts but rather matters that are questions of law and fact mixed and involve the line of reasoning the Government expects to adopt in sustaining its position at the trial. The Court is of the opinion that that is not one of the offices of a bill of particulars. The motion is denied.

* * * * * * * * * * *

Filed April 11, 1956

Govt. Exhibit No. 1

RESOLUTION

Whereas the Congress from time to time has enacted laws designed to protect the internal security of the United States from acts of espionage and sabotage and from infiltration by persons who seek to overthrow the Government of the United States by force and violence; and

Whereas those who seek to evade such laws or to violate them with impunity constantly seek to devise and do devise clever and evasive means and tactics for such purposes; and

Whereas agents and dupes of the world Communist conspiracy have been and are engaged in activities (including the origination and dissemination of propaganda) designed and intended to bring such protective laws into disrepute or disfavor and to hamper or prevent effective administration and enforcement thereof; and

Whereas it is vital to the internal security of the United States that the Congress maintain a continuous surveillance over the problems presented by such activity and threatened activity and over the administration and enforcement of such laws: Now, therefore, be it

Resolved, That the Committee on the Judiciary, or any duly authorized subcommittee thereof, is authorized and directed to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation, and enforcement of other laws relating to espionage, abotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effects of subversive activities in the United States, its Territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence.

SEC. 2. The Committee, or any duly authorized subcommittee thereof, is authorized to sit and act at such places and times during the sessions, recesses, and adjourned periods of the Senate, to hold such hearings, to require by subpenas or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and, within the amount appropriated therefor, to make such expenditures as it deems advisable. The cost of stenographic services to report hearings of the committee or subcommittee shall not be in excess of 25 cents per hundred words. Subpenas shall be issued by the chairman of the committee or the subcommittee, and may be served by any person designated by such chairman.

A majority of the members of the committee, or duly authorized subcommittee thereof, shall constitute a quorum for the transaction of business; except that a lesser number to be fixed by the committee, or by such subcommittee, shall constitute a quorum for the purpose of administering oaths and taking sworn testimony.

SEC. 3. The committee, or duly authorized subcommittee, shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary in the performance of its duties, and is authorized to utilize the services, information, facilities, and personnel of the various departments and agencies of the Government to the extent that such services, information, facilities, and personnel, in the opinion of the heads of such departments and agencies, can be furnished without undue interference with the performance of the work and duties of such departments and agencies.

SEC. 4. The expenses of the committee, which shall not exceed $10,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee on or before January 31, 1951.

Filed April 11, 1956

Govt. Exhibit No. 2

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

This is to certify that at the meeting of the Senate Committee on the Judiciary on Thursday, January 20, 1955, the following members being present,

Senator Kilgore, Chairman
Senator Eastland
Senator Kefauver
Senator Johnston

Senator Hennings
Senator McClellan
Senator Daniel
Senator O'Mahoney
Senator Wiley (late)
Senator Langer
Senator Jenner
Senator Watkins
Senator Dirksen
Senator Welker
Senator Butler,

the following resolution was adopted on motion of Senator Eastland:

"RESOLVED, by the Committee on the Judiciary, That the Special Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws under S. Res. 366 (81st Cong.) be continued as a special Subcommittee of the Committee on the Judiciary during the 84th Congress and that the Committee report an appropriate original resolution favorably to the Senate for this purpose."

JOSEPH A. DAVIS
Joseph A. Davis
Chief Clerk

March 12, 1956

Filed April 11, 1956

Govt. Exhibit No. 3

RESOLUTION

Resolved, That in holding hearings, reporting such hearings, and making investigations as authorized by section 134 of the Legislative Reorganization Act of 1946, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate, insofar as they relate to

the authority of the committee to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effect of subversive activities in the United States, its Territories and possessions, including but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence, the Committee on the Judciiary, or any subcommittee thereof, is authorized from March 1, 1955, through January 31, 1956, (1) to make such expenditures as it deems advisable; (2) to employ on a temporary basis such technical, clerical, and other assistants and consultants as it deems advisable; and (3) with the consent of the heads of the department or agency concerned, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

SEC. 2. The expenses of the committee under this resolution which shall not exceed $260,000 shall be paid from the contingent fund of the Senate by vouchers approved by the chairman of the committee.

SEC. 3. This resolution shall be effective as of March 1, 1955.

Filed April 11, 1956

Govt. Exhibit No. 8

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

This is to certify that at the meeting of Monday, February 7, 1955, of the Subcommittee to Investigate the Ad-

ministration of the Internal Security Act and other Internal Security Laws under S. Res. 366 (81st Congress) of the Senate Committee on the Judiciary, the following members being present,

Senator James O. Eastland, Chairman
Senator Olin D. Johnston
Senator John L. McClellan
Senator Thomas C. Hennings
Senator Price Daniel
Senator William E. Jenner
Senator John Marshall Butler,

the following resolution was proposed by Senator Johnston and adopted by the said Subcommittee:

"Resolved, by the Internal Security Subcommittee of the Committee on the Judiciary, That pursuant to subsection (3) of Rule XXV, as amended, of the Standing Rules of the Senate (S. Res. 180, 81st Cong., 2d sess., agreed to February 1, 1950) and the resolution of the Judiciary Committee thereunder, approved January 20, 1955, a quorum of the subcommittee for the purpose of taking sworn testimony shall consist of not less than two Senators of such subcommittee, except when the subcommittee in its judgment, two-thirds of the subcommittee members concurring, may authorize a quorum of one Senator of such subcommittee for the purpose of taking such testimony."

JOSEPH A. DAVIS
Joseph A. Davis
Chief Clerk
Senate Committee on Judiciary

March 12, 1956

Govt. Exhibit No. 10

Filed April 11, 1956

84th Congress
1st Session

S. 2326

IN THE SENATE OF THE UNITED STATES

June 27, 1955

MR. EASTLAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require any attorney at law practicing before a Federal court, or appearing before a congressional committee as counsel for a witness testifying before such committee, or appearing as counsel before any department or agency in the executive branch of the Government of the United States, to file a non-Communist affidavit.

Govt. Exhibit No. 12

Filed April 11, 1956

84th Congress
1st Session

Committee Print

STRATEGY AND TACTICS OF WORLD COMMUNISM

(Significance of the Matusow Case)

Report of the

Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws

to the

Committee on the Judiciary United States Senate

Eighty-Fourth Congress

First Session

Pursuant to S. Res. 58 on the
Significance of the Matusow Case

April 6, 1955

STRATEGY AND TACTICS OF WORLD COMMUNISM

The Significance of the Matusow Case

Background

Late in 1954, Harvey M. Matusow, who had been serving as a witness and informant for Government agencies against the Communist Party of the United States since 1950 suddenly became an important figure in a stepped-up Communist drive against the security, investigative, and en-

forcement agencies of the United States Government, and against ex-Communists helping those agencies. To approach a study of this development, some background information is desirable.

The Communist Party, U. S. A., Under Fire

Louis B. Nichols, assistant to FBI Director J. Edgar Hoover recently disclosed[1] that—

> To date, 134 Communist Party leaders have been indicted for violation of the Smith Act. In each case where convictions have resulted—and in securing eighty-three convictions, there have been only three acquittals—former Communists and onetime confidential informants have supplied the evidence which led juries to conclude the persons were guilty beyond a reasonable doubt. If they are to survive, the Communists know that the F. B. I. and its sources of information must either retreat or be destroyed.

These developments had caused the Communist Party grave concern. In his "History of the Communist Party of the United States" published in 1952, William Z. Foster had devoted an entire chapter to what he called the "Persecution of the Communist Party." He declared: "The Government's attack against the Communist Party confronts it with many urgent tasks." He added, "Especially the party will have to become skilled in defending its members and organizations, and it must intensify its vigilance to protect itself from provocateurs and stool pigeons" (p. 521).

Attorneys in the Department of Justice, as well as the Communist Party itself, realized that the backbone of the series of cases against the party was the group of witnesses the Department was able to mobilize. Assistant Attorney General William F. Tompkins, in charge of the Internal

[1] In a speech before the Freedom Forum of the Anti-Defamation League on April 28, 1955.

Security Division of the Department of Justice, outlined the picture:[2]

> Because of the secrecy with which the Communist Party operates, the job of ferreting out the Communist conspirators, exposing them for what they are and prosecuting them successfully is a difficult one. When people are engaged in a conspiracy to overthrow the Government, they meet only their confederates; they meet in cellars; in dark alleys; in isolated places. They utilize every device to cover up their operations. There is only one way to uncover such a plot and that is to use the information furnished by former Communists and by confidential informants. And that is why the Communist Party has always fostered a vigorous campaign to destroy the effectiveness of the testimony offered against party leaders by former Communists. They have coined the term "informer" as a term of opprobrium in characterizing all Government witnesses in Communist cases.

The long range objective of the Communist Party was to crack the Government's prosecutionary structure and smash it.

The history of the Communist movement discloses that when once a Communist has defected or is suspect and seeks to reestablish himself in Communist good graces, he is compelled to humble himself completely as evidence of his good faith. By way of example, let us cite the testimony on February 6, 1947, before the House Committee on Un-American Activities of Ruth Fischer, a former leading German Communist, in reference to Gerhart Eisler, her brother, a representative in the United States of the Communist International:

> Eisler had been in disgrace during 1928, 1929, and 1930, and everybody of the Communist Party in Berlin expected his expulsion from the Communist Party of

[2] In a speech delivered on December 4, 1954, at Mount Holyoke College.

Germany, because of his rebellion against Stalin at that time.

Then he was sent to a mission into China, with the GPU delegation, to purge rebellious Chinese Communists. At that time Eisler's mission was not a high one. * * *. In these Chinese purges he behaved so cruelly and carried out the orders so well, that the report about him in Berlin said that he was really the hangman of the rebellious Chinese Communists, who were sentenced by the decisions of Moscow. * * *

In 1933, when I met him in Paris, on his first mission to the United States, he was in the best of spirits, because his second Comintern assignment was a much higher one than his previous assignment to China, and he regarded it as a complete rearrangement of his relationship with the Politburo.

In other words, in order to establish his bona fides with the Communist Party, a defector had to demonstrate his effectiveness in doing a hatchet job on anti-Communists. Communist defense strategy demanded that a fruitful source of evidence against the party be discredited and destroyed and that those seeking the successful prosecution of the Communists be demoralized and routed. The audacity of this frontal assault upon those responsible for our national security by agents of a foreign, subversive power is no less remarkable than the extent to which this assault has found support and credence outside the ranks of the Communist Party.

"The revelations of Harvey Matusow have put the masters of the frameup into panic," gloated the Daily Worker of February 7, 1955.

The Matusow enterprise was not and could not be a one-man project. Nor was it merely a project emanating from the brains of Cameron & Kahn, the publishers. It had far wider ramifications, as we have seen, involving the cooperation of Nathan Witt, Mary M. Kaufman, Harry Sacher, Hyde Tibbs, Carl Marzani, Elizabeth Gurley Flynn, Clinton Jencks, and others. Synchronized with the production of

the book and demands for a new trial in the cases of the 13 Communist leaders and that of Clinton Jencks was the active campaign along these lines conducted by the Communist press.

MATUSOW'S BOARD OF LEGAL STRATEGY

Subversion Via the Law

In its report dated April 20, 1953, the Subversive Activities Control Board held that the Communist Party, U. S. A. "strives for the establishment of a dictatorship of the proletariat in the United States; a goal which would rob the American people of the freedoms they have forged." To put it another way, it seeks to undermine and destroy the Government of the United States and substitute a dictatorship, which Lenin has defined as "power based directly upon force and unrestricted by any law."[1]

The Matusow case brings to the fore how the Communist Party uses its skilled legal technicians, its lawyers, to disrupt and paralyze the machinery of justice with particular reference to the prosecution of Communists' cases. It stands to reason that if the Communist Party can immobilize and throw out of joint the prosecutionary machinery of the Justice Department, the result inevitably will be to render powerless the law of the land and to open the way for the Communist Party to pursue freely its efforts to subvert our Government.

In this particular instance, we are confronted with an assault upon our legal structure without parallel in its audacity and scope. With Matusow as the chief instrument, the legal strategy board of the Communist operation consisted of Nathan Witt, former secretary of the National Labor Relations Board; Abner Green, Executive Director of the Civil Rights Congress; Lawrence Emery, Ralph Shikora, and Mary M. Hamilton.

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[1] Lenin, Selected Works, vol. XI, p. 32 (International Publishers, New York, 1943).

trust as ordinary lawyers, each with his own voluntarily selected clients, and each one pursuing his profession in his own individual way according to accepted standards. On the contrary, they constituted part of a legal phalanx to further the subversive aims of the Communist Party and operating under Communist discipline. Asked to testify as to the truth of a report that they were all members of a special lawyers' section of the Communist Party under a section organizer named Abraham Unger, they all invoked the fifth amendment, with the exception of Mary M. Kaufman who was serving as counsel for Communist cases in Denver, and was not required to testify here.

Nathan Witt, Master Legal Strategist

On August 3, 1948, David Whittaker Chambers appeared before the House Committee on Un-American Activities and stated:

> For a number of years I had myself served in the underground, chiefly in Washington, D. C. * * * It was an underground organization of the Communist Party developed, to the best of my knowledge, by Harold Ware. I knew it at its top level, a group of seven or so men. * * * The head of the underground group at the time I knew it was Nathan Witt, attorney for the National Labor Relations Board.

When questioned as to the truth or falsity of this statement, Witt invoked the fifth amendment (pp. 757, 758).

From 1933 to 1940, Witt had devoted his talents to operations within the Government itself, including the Agricultural Adjustment Administration and the National Labor Relations Board of which he ultimately became the Secretary.

When Mr. Witt was asked, "Were you responsible during that period for the employment by the National Labor Relations Board of any person or persons known to you at the time to be Communists?", he replied: "I refuse to

answer the question on the grounds that under the fifth amendment I may not be compelled to be a witness against myself" (pp. 786, 787). Having ended his career within the Government, Witt has pursued activities in behalf of the Communist Party against the Government from without, the Matusow case being one major operation. From the outset, the hand of Nathan Witt has appeared at decisive points in its development.

As early as June 1954, at least 3 months before the long-distance telephone conversation between Matusow and Kahn to Dallas, Tex., Witt was taking the initiative, keeping himself discreetly in the background wherever possible. Let the record speak on this:

> Mr. Sourwine. You became aware of the possibility of a recantation by Mr. Matusow of his earlier testimony when Bishop Oxnam made his speech and referred to that subject in June of 1954.
>
> Mr. Witt. Yes, sir.
>
> Mr. Sourwine. You thereafter followed closely the developments in the Matusow case and told Rod Holmgren, publicity director of Mine and Mill, to do so?
>
> Mr. Witt. Well, that is a little too general. Just a word on that. You say the Matusow case. I followed closely any developments relating to a possible recantation on Mr. Matusow's part, and I did work with Mr. Rod Holmgren of the Mine, Mill staff in that connection.
>
> Mr. Sourwine. Was it he, Mr. Holmgren, or you wrote Mr. Bishop Oxnam in July 1954 requesting that information?
>
> Mr. Witt. It was Mr. Holmgren (p. 764).

During the early part of 1954, Witt admitted he had made contact with Carey McWilliams, editor of the Nation, and that Rod Holmgren, publicity director of the Communist-controlled Mine, Mill, and Smelter Workers, had also been in contact with Martin Solow of the same magazine. It is interesting that there appeared in the Nation for April

10, 1954, an article on "The Informer," by Frank J. Donner, identified by Harry Sacher as an attorney who occupied joint office space with him (p. 829). Donner defended Albert Blumberg, a Communist leader charged with violating the Smith Act, according to the Daily Worker of January 13, 1955, page 3. The Nation article clearly forewarned of the campaign underway to discredit Government witnesses in Communist cases. In advertising this article, the Nation has quoted an anonymous "noted civil liberties lawyer" to the effect that "it would blow up the whole dirty mess created by the informers." Donner's article opens as follows:

> Today scores of political informers, most of them ex-Communists, have become circuit-riding witnesses, appearing again and again in Smith Act and similar prosecutions, deportation proceedings, and before legislative committees.

At least 1 month prior to Kahn's long-distance phone conversation with Matusow in Dallas, Witt was conversing with his legal associate, John T. McTernan, in the Jencks case, in regard to the possibility of a book by Harvey Matusow and the possibility that "we would in one way or another lend assistance to that book-writing project on Mr. Matusow's part" (pp. 765, 766). The book was an integral part of the strategy of McTernan and Witt in seeking a new trial for Clinton Jencks and an affidavit from Matusow.

* * * * * * * * * * *

Harry Sacher Defies the Subcommittee

Complacent Americans are for the most part unmindful of the destructive potentialities of a highly organized and brazen minority operating under the protective shelter of our democratic safeguards. They have little realization of the lengths to which these conspirators will go if afforded sufficient leeway.

In exploiting the Matusow case and the support it has received in certain circles, the Communists are by no means content to limit its impact to the attempt to secure a reversal in the trial of the Communist leaders, Elizabeth Gurley Flynn et al., and in the Jencks case. They are out to wreck the Government's prosecutionary machinery in its entirety and the investigative functions of congressional committees dealing with subversive activities.

When Harry Sacher took the stand on April 19, 1955, unaccompanied by counsel, the subcommittee knew that it was confronted with a veteran defender of Communist cases all the way back to 1937 when he was associated with the International Labor Defense, which Attorney General Francis Biddle had designated as "the legal arm of the Communist Party." Sacher has played a major part in the defense of cases involving Communist leaders under the Smith Act since 1949. If any single quality can be said to characterize Mr. Sacher's appearances in defense of Communist cases, it may be said that it is his attitude of defiance toward constituted authority, thus repudiating the oath he took as a member of the bar to respect that authority. He utilized his appearance to defy the authority of the subcommittee in refusing to answer the following questions on the ground that he would not "discuss my beliefs, religious, political, economic, or social." He did not invoke the fifth amendment.

1. "Are you, Mr. Sacher, a member of the Communist Party, U. S. A." (p. 836)?

2. "Are you now a member of the Communist Party of the United States" (pp. 836, 837)?

3. "Have you ever been a member of the Communist Party of the United States" (p. 837)?

4. "Are you now or have you ever been a member of the lawyers' section of the Communist Party, U. S. A." (p. 838)?

Sacher used the witness chair to voice the plea for "all Americans to join me in resisting inquiries of this kind (p. 839).

In the course of his testimony, Sacher admitted that he had served a prison sentence for contempt of court (before Judge Medina in the trial of the 11 top Communist leaders) after his contempt conviction had been affirmed by the Supreme Court of the United States.

At this point, it is well to note the evidence that Harry Sacher was a member of the Communist Party in its higher echelons. According to the testimony of John Lautner, a former member of the National Review Commission of the Communist Party, Sacher was present in January 1950 at a birthday celebration in honor of Alexander Bittelman, a leading theoretician of the party, which was held in the national board room of the national committee of the Communist Party at 35 East 12th Street in New York City. When asked about this incident, Sacher said he did not recollect it. But he did not deny it.

Sacher held to his position despite his being directed to answer and despite the explanation given him from the Chair by Senator McClellan:

> But when we come to the security of our country, an organization that is dedicated obviously to subversion purposes as an objective, I think it becomes the duty of the Congress of the United States and also the duty of the executive branch of the Government to try to ferret these things out and expose them if they relate directly to the national security—associations at some time and the knowledge may help the Congress or help other officials of the Government to preserve national security. For that reason the Chair thinks the question is proper and directs you to answer it (p. 838).

Mr. Sourwine, as chief counsel of the subcommittee, added an additional consideration to show the germaneness of the questions:

> Mr. Sourwine. Mr. Chairman, among the measures under consideration by this committee is proposed leg-

islation for the purpose of fixing additional standards with respect to the practice of law in the Federal courts. Among the suggestions for inclusion in such legislation is a suggestion which would prohibit members of the Communist Party from practicing in Federal courts. It is germane to the consideration of such legislation to inquire into the circumstances involving the practice of law in Federal court by persons who are Communists and by persons who are defending Communists. I believe that the inquiries made here and other inquiries which have been made and which will be made in this Matusow case have bearing upon that legislative problem now pending before the committee (p. 835).

The subcommittee feels that by his refusal to answer the above questions in the face of all directions from the Chair and the explanations given, and the added fact that in the course of his testimony he gave appearance of being fully conscious of the gravity of his conduct and pursued it nonetheless, Sacher is flagrantly in contempt of the subcommittee. He acted like a man seeking a court test of the power and authority of the subcommittee.

Finding and Conclusions

* * * * * * * * * * *

30. Because the Communist Party is dedicted to the overthrow of the Government of the United States by force and violence, and to this end each party member, lawyer as well as nonlawyer, is dedicated under the force of the party's discipline, lawyer members of the Communist Party are thus flying in the face of their obligation to serve as officers of the court and to uphold the Constitution of the United States.

Recommendations

1. That the Government in its normal program for safeguarding the judicial process and the integrity of all Government witnesses, continue to give special attention to con-

certed efforts of the Communist conspiracy to subvert such processes and to corrupt or victimize such witnesses.

2. That the Department of Justice lay before a grand jury the facts relating to the apparent conspiracy to obstruct justice involving Matusow, Witt, Kahn, and others.

3. That our hearings and this report be transmitted to appropriate authorities in New York State with a view to disbarment of the four members of the bar of that State who refused to testify respecting their Communist affiliations.

4. That legislation be enacted to prohibit appearances as counsel in Federal courts or before congressional committees or executive departments or agencies of the Federal Government by attorneys who have not by affidavit declared that they are not members of the Communist Party or any organization which has for its purpose the destruction of the Government of the United States by force and violence, or who have persisted in refusal, under oath, to testify respecting their Communist affiliations.

5. That legislation be enacted to strengthen regulations for the control of passports so that they may not be used for unauthorized travel.

6. That our hearings and this report be transmitted to the Veterans' Administration with a view to reexamination by that agency of its entire file on Harvey Matusow.

* * * * * * * * * * *

Def. Exhibit No. 13

Filed March 12, 1956

STRATEGY AND TACTICS OF WORLD COMMUNISM

THE SIGNIFICANCE OF THE MATUSOW CASE

HEARING

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Eighty-Fourth Congress
First Session
Pursuan to S. Res. 58
February 21, 1955

PART 1

Printed for the use of the Committee on the Judiciary

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 318, Senate Office Building, Senator James O. Eastland (chairman of the subcommittee) presiding.

Present: Senators Eastland, Johnston, McClellan, Daniel, Jenner, and Watkins.

J. G. Sourwine, chief counsel; Alva C. Carpenter, associate counsel; Benjamin Mandel, director of research; and Robert C. McManus, professional staff member.

The Chairman. The committee will come to order.

Mr. Matusow, step around, please, sir.

Mr. Matusow. Pardon me, sir.

The Chairman. Hold up your right hand. Do you solemnly swear the testimony you are about to give to the Internal Security Subcommittee of the Committee on the Judiciary of the Senate of the United States is the truth, the whole truth, and nothing but the truth?

Mr. Matusow. I do.

The Chairman. The witness before the Subcommittee on Internal Security today is Harvey M. Matusow.

Mr. Matusow has previously appeared before us in executive session on February 13, March 5, and March 13, 1952, and in public sessions on February 13, 1952, March 5, 1952, March 13, 1952, and October 8, 1952. In his previous appearances, he gave sworn testimony regarding the Institute of Pacific Relations, certain youth organizations and the International Union of Mine, Mill and Smelter Workers. Mr. Matusow has since made public statements recently to the effect that he lied when he testified before this subcommittee and on other occasions. The purpose of the hearing now commencing is to inquire into this whole matter.

It is interesting to note that in regard to his testimony concerning Mr. Owen Lattimore, Mr. Matusow has misquoted himself and then recanted the misquotation. Actually, his testimony concerning Lattimore's book being pushed by the Communist bookstores was only confirmation of documentary evidence already in our record.

As a result of testimony taken in this hearing, it may appear that Mr. Matusow told the truth in his original testimony before us and is now lying when he says that his original testimony was not the truth. It may appear that part of what he told us was true and part was untrue. It may appear that he never tells the truth by intent. It may appear that his recent conduct is designed simply to call attention to a book which is soon to be published under his signature, and that his motive for this shabby performance is merely low personal greed. It may appear that he has been the victim of pressure brought by Communists, as well as those who have a vested interest in concealing the Communist conspiracy, and he has finally broken under this pressure. Or there may be still another explanation.

It must be clearly understood that Harvey Matusow does not come before us this morning merely as an individual. He is or he says he is, a former member of the Commu-

nist Party who has made a previous confession of wrongdoing as a Communist and then given evidence to expose the Communist conspiracy. He is one of many ex-Communists who have given similar evidence. That is not to say that his self-incrimination of lying under oath automatically convicts others of the same offense, nor that the finger of scorn which he points at himself must be pointed also at those who heard his allegedly false testimony. In the centuries during which the petit jury and grand jury have been part of our legal tradition, neither has been discredited by the fact that there have been occasional appearances of liars before each.

Those who seek to expose the Communist conspiracy *and also those who struggle to conceal it* are both fully aware of the importance of the ex-Communist in this world-wide struggle to preserve human freedom. The informed enemy of communism knows that enormous quantities of priceless information have been provided by former Communists who have repented and now seek to undo the wrongs they did in the past by active opposition to communism. The Communist, as well as those who have a vested interest in concealing the truth about the conspiracy, know this just as well as we do. That is the reason that the assault on the ex-Communist who is willing to tell what he knows has been conducted with such unbridled fury.

We recall the vicious assault on Whittaker Chambers and Elizabeth Bentley after they came forward with their stories of the Communist traitors who had been stealing documents from the United States Government and turning them over to Soviet agents during a period of almost 10 years. Whittaker Chambers proved his case when he produced his famous "pumpkin papers," which were a collection of approximately 200 of these documents that he had obtained from the traitors in Government. Some of these documents were in the actual handwriting of Alger Hiss and Harry Dexter White. Elizabeth Bentley told

this Subcommittee in detail the methods by which Communist agents penetrated the Government, rose in the Government, made policies in the Government, and protected one another when they were threatened with dismissal from the United States Government. The subcommittee put her testimony through the crucible in our inquiry into interlocking subversion in Government departments. We found hundreds upon hundreds of documents which showed that her description of the methods of the conspiracy had been flawlessly truthful. We are still finding documents which support the testimony she originally gave us at a time when she did not have access to a single one of them.

At the first public session held by this subcommittee on July 25, 1951, the then chairman, the late Senator Pat McCarran of Nevada, had said this, and I quote:

> In such an investigation as this, where a possible conspiracy is being examined, very often the only evidence obtainable derives from persons who once participated in the conspiracy. Only eyes that witnessed the deeds, and ears that heard the words of intrigue can attest thereto. Thus, ex-Communists, and agents of the Government who posed as Communists, often are the only sources of evidence of what transpired behind doors closed to the non-Communist world.

This situation which Senator McCarran pointed out, with respect to communists, is not peculiar to the Communist conspiracy alone. It is a well-recognized principle of law that:

> Conspiracies need not be established by direct evidence of the act charged. They may, and generally must, be proved by a number of indefinite acts, conditions, and circumstances which vary according to the purposes to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused which discloses a community of unlawful purpose.

existence of the agreement or assent of the minds need not be proved directly, but may be inferred by the jury from the facts proved.[1]

The subcommittee in this series of hearings hopes to determine what is the truth. The subcommittee may be able to show, in some instances, what are lies. The subcommittee probably can and will try to make a record as to just what Mr. Matusow now says the truth is. The subcommittee also will seek to determine, from the testimony of this witness and others, all the facts surrounding this case, and to make as complete a record of those facts as possible.

The subcommittee does not propose to be sidetracked into any examination or consideration of matters not involved with the testimony of Harvey Matusow, his public utterances, and the preparation and publication of the book soon to be published under his name.

Now, Mr. Matusow, you are here under subpena of the Internal Security Subcommittee. We have a number of questions that we desire to ask you, sir. We want your answers to be responsive to the questions and to be as short as possible to explain your point in detail.

Before the hearing is over, if you desire to make a statement or volunteer information, you will certainly be given the opportunity to do so.

Mr. Sourwine, you may proceed with the witness.

[1] Am Jur Vol II Conspiracy, par 38